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| 1 | IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION | 1 | I N D E X |
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| 3 | UNITED STATES OF AMERICA,) | 3 | Appearances 2 |
| 4 | Plaintiff,) | 4 | JOHN HOWELL |
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| 11 | | 11 | E X H I B I T S |
| 12 | ORAL DEPOSITION OF | 12 | No. Description Page |
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| 16 | as a witness at the instance of the Plaintiff, and | 16 | Exhibit 586 Ten Photographs 104 |
| 17 | duly sworn, was taken in the above-styled and | 17 | Exhibit 587 RaPower3 Documents Produced by John Howell 110 |
| 18 | numbered cause on the 23rd of August, 2017, from | 18 | Exhibit 588 2/2/12 Letter to John Howell from Greg Shepard 138 |
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| 20 | RDR/CRR/CSR in and for the State of Texas, reported | 20 | Exhibit 590 Rocking H Enterprises, Inc. Member Activity Report 5/1/12 - 5/31/12 150 |
| 21 | by machine shorthand at the offices of Internal | 21 | |
| 22 | Revenue Service, 4309 Old Jacksboro Highway, Wichita | 22 | |
| 23 | Falls, Texas, pursuant to the Federal Rules of Civil | 23 | |
| 24 | Procedure and any provisions stated on the record or | 24 | |
| 25 | attached hereto. | 25 | |
| 1 | A P P E A R A N C E S | 1 | Exhibit 591 Documents Entitled "Series #1 Solar Lenses," "Series #2 Solar Lenses," "Series #3 Solar Lenses," "Series #4 The IAUS Turbine" and "Series #5 The Bonus Contract" 154 |
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| 16 | 2911 Turtle Creek Boulevard | 16 | |
| 17 | Suite 300 | 17 | |
| 18 | Dallas, Texas 75219 | 18 | |
| 19 | (214) 523-9076 | 19 | |
| 20 | jteakell@teakelllaw.com | 20 | |
| 21 | FOR THE DEFENDANTS RAPOWER-3, LLC, INTERNATIONAL | 21 | |
| 22 | AUTOMATED SYSTEMS, INC., LTB1, LLC, and NELDON | 22 | |
| 23 | JOHNSON: | 23 | |
| 24 | MR. STEVEN R. PAUL (telephonically) | 24 | |
| 25 | NELSON, SNUFFER, DAHLE & POULSEN, P.C. | 25 | |
| | 10885 South State Street | | |
| | Sandy, Utah 84070 | | |
| | (801) 576-1400 | | |
| | spaul@nsdplaw.com | | |

**Plaintiff
Exhibit**

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| <p style="text-align: right;">Page 5</p> <p>1 Exhibit606 11/15/14 E-Mail to John Howell 226 from Greg Shepard</p> <p>2</p> <p>3 Exhibit607 5/28/15 Letter to IRS, Attn: 228 Stephen Earley from John Howell</p> <p>4 Exhibit608 2/26/16 Letter to IRS, Attn: 229 Gaylon Berg from John Howell</p> <p>5</p> <p>6 Exhibit609 7/20/16 Letter to IRS, Attn: 232 Beth Hagley from John Howell</p> <p>7</p> <p>8 EXHIBITS PREVIOUSLY MARKED</p> <p>9 Exhibit No. Page</p> <p>10 18 207</p> <p>11 23 201</p> <p>12 242 172</p> <p>13 243 173</p> <p>14 245 174</p> <p>15 348 183</p> <p>16 370 209</p> <p>17 396 85</p> <p>18 480 206</p> <p>19 501 180</p> <p>20 582 202</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 7</p> <p>1 JOHN HOWELL,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 E X A M I N A T I O N</p> <p>4 BY MS. HEALY GALLAGHER:</p> <p>5 Q. All right. Mr. Howell, good morning.</p> <p>6 A. Good morning.</p> <p>7 Q. Would you please say and spell your name</p> <p>8 for the record.</p> <p>9 A. John Howell, J-O-H-N H-O-W-E-L-L.</p> <p>10 Q. And would you please give me the city and</p> <p>11 state where you live.</p> <p>12 A. Wichita Falls, Texas.</p> <p>13 Q. Do you work in the same place?</p> <p>14 A. Yes.</p> <p>15 Q. All right. Mr. Howell, have you ever been</p> <p>16 deposed before?</p> <p>17 A. Yes, a number of years back.</p> <p>18 Q. How many times?</p> <p>19 A. Just once.</p> <p>20 Q. Okay. All right. So you may have gone</p> <p>21 over these ground rules then or you may have talked</p> <p>22 to your attorney about them today, but I'd like to</p> <p>23 just cover the ground rules for a deposition so that</p> <p>24 we're on the same page.</p> <p>25 So in this deposition I will ask you</p> |
| <p style="text-align: right;">Page 6</p> <p>1 P R O C E E D I N G S</p> <p>2 MS. HEALY GALLAGHER: We are on the record</p> <p>3 in the case of United States versus RaPower3,</p> <p>4 et al., on August 23rd at approximately 8:37 Central</p> <p>5 Time. My name is Erin Healy Gallagher of the</p> <p>6 United States Department of Justice's tax division</p> <p>7 appearing on behalf of the United States.</p> <p>8 Counsel, would you please make your</p> <p>9 appearances.</p> <p>10 MR. TEAKELL: John Teakell for Mr. John</p> <p>11 Howell.</p> <p>12 MR. PAUL: Steven Paul by telephone for</p> <p>13 the RaPower3 defendants.</p> <p>14 MS. HEALY GALLAGHER: Erin Hines and</p> <p>15 Christopher Moran, who also represent the</p> <p>16 United States, are not presently on the line. And</p> <p>17 Donald Reay, who currently still represents R.</p> <p>18 Gregory Shepard and Roger Freeborn, is also not</p> <p>19 present.</p> <p>20 All right. This deposition will be</p> <p>21 governed by the Federal Rules of Civil Procedure.</p> <p>22 All of the exhibits that we use today will be sent</p> <p>23 with the court reporter to be made part of this</p> <p>24 proceeding, and any other stipulations will be</p> <p>25 addressed as the need arises.</p> | <p style="text-align: right;">Page 8</p> <p>1 questions, and my questions and your answers will be</p> <p>2 recorded by the court reporter here. So you're</p> <p>3 doing a good job so far, but please speak loudly</p> <p>4 enough for her to hear you and answer my questions</p> <p>5 verbally. Do you understand?</p> <p>6 A. Yes.</p> <p>7 Q. The court reporter cannot record a nod or</p> <p>8 shake of the head, and words like uh-huh or huh-uh</p> <p>9 are not clear on the transcript that we will create,</p> <p>10 so if either one of us does that, I'll just stop and</p> <p>11 remind us and we'll carry on. Okay?</p> <p>12 A. Yes.</p> <p>13 Q. We have a tendency in casual conversation</p> <p>14 to speak over one another; for example, to start</p> <p>15 answering a question before it's finished being</p> <p>16 asked. Again, so that we get a clear transcript,</p> <p>17 I'll ask that you wait until I finish asking a</p> <p>18 question before you start to answer. Will you do</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. And when I do finish asking each question,</p> <p>22 your task for today is to give full and complete</p> <p>23 answers. Do you understand that obligation?</p> <p>24 A. Yes.</p> <p>25 Q. Now, my obligation is to ask</p> |

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1 understandable questions. So if you don't
 2 understand a question for any reason, please let me
 3 know and I'll do my best to clarify. Will you do
 4 that?
 5 A. Yes.
 6 Q. All right. And occasionally another
 7 attorney who's present may object to a question that
 8 I ask. That objection is solely to make a note on
 9 the record. Otherwise, you must answer the question
 10 that I ask as if the objection was never made. Do
 11 you understand that?
 12 A. Yes.
 13 Q. Sometimes it'll happen that you'll give an
 14 answer as completely as you can but then later on in
 15 the deposition you may remember additional
 16 information or different information that may
 17 clarify or amplify your previous answer.
 18 When that occurs, if it occurs, please let
 19 me know that there's something you would like to add
 20 and we'll take care of it immediately. Will you do
 21 that?
 22 A. Yes.
 23 Q. When you're answering a question, if you
 24 think that there's a document or some documents that
 25 may help you remember information that's relevant,

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1 please let me know and we'll see if we have the
 2 document here. Okay?
 3 A. Okay.
 4 Q. I will try to remember to take a break
 5 every 90 minutes or so, but if you need a break at
 6 any time, please let me know. Okay?
 7 A. Okay.
 8 Q. If there is a question pending, however,
 9 you need to answer the question before we take a
 10 break.
 11 A. Yes.
 12 Q. And you're represented today by
 13 Mr. Teakell. If you want to talk to your attorney
 14 in the course of this deposition, that's fine. But
 15 if there's a question pending or if you're in the
 16 middle of an answer, you will need to finish it
 17 before you speak to your attorney. Do you
 18 understand?
 19 A. Yes.
 20 Q. All right. Because we're here to get as
 21 accurate a record as we can of the facts of this
 22 case as you remember them, I have to ask, is there
 23 anything that would prevent you from understanding
 24 and answering my questions today with the full
 25 capacity of your recollection?

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1 A. No.
 2 Q. Have you had anything alcoholic to drink
 3 in the past eight hours?
 4 A. No.
 5 Q. Are you taking medications or drugs of any
 6 kind that might interfere with your memory?
 7 A. No.
 8 Q. Is there any other reason you can think of
 9 why you might not be able to answer my questions
 10 fully and accurately today?
 11 A. No.
 12 Q. Mr. Howell, what e-mail addresses have you
 13 used since 2010?
 14 A. Rockingh@wf.net.
 15 Q. Any others?
 16 A. Not that I can recall.
 17 Q. Do you use that for both business and
 18 personal e-mails?
 19 A. Yes.
 20 Q. Mr. Howell, did you graduate from high
 21 school?
 22 A. Yes.
 23 Q. In what year?
 24 A. 1973.
 25 Q. Did you have any formal education after

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1 1973?
 2 A. Yes.
 3 Q. What formal education did you have?
 4 A. Some college at Midwestern State
 5 University.
 6 Q. You said some college. So do you have a
 7 degree from Midwestern State?
 8 A. No, I do not.
 9 Q. When did you attend Midwestern State?
 10 A. Let's see. It was probably 1986 to '87.
 11 Awhile back.
 12 Q. Sure. Any other times than from 1986 to
 13 1987?
 14 A. No.
 15 Q. Since 1973 and other than your time at
 16 Midwestern State, have you had any other formal
 17 education?
 18 A. I attended a number of tax classes that
 19 were given by H&R Block.
 20 Q. When did you take those classes?
 21 A. Various years. Probably from '75
 22 through '80, '81, '82.
 23 Q. Okay. Other than time at Midwestern State
 24 and tax classes from H&R Block, have you had any
 25 other formal education since 1973?

| | |
|---|--|
| <p style="text-align: right;">Page 13</p> <p>1 A. No.</p> <p>2 Q. So from 1986 to 1987, what classes did you</p> <p>3 take at Midwestern State?</p> <p>4 A. Accounting.</p> <p>5 Q. Any others?</p> <p>6 A. No.</p> <p>7 Q. How many accounting classes did you take?</p> <p>8 A. Probably three. Probably about three.</p> <p>9 Q. Did those accounting classes involve</p> <p>10 topics related to income taxes?</p> <p>11 A. Yes.</p> <p>12 Q. So what kinds of things did you learn</p> <p>13 about income taxes in your accounting classes at</p> <p>14 Midwestern State?</p> <p>15 A. It was just the basic income taxes, rules</p> <p>16 and regulations.</p> <p>17 Q. So was it more on the procedural side or</p> <p>18 more on the technical tax side?</p> <p>19 A. Both.</p> <p>20 Q. So if it was three accounting classes, was</p> <p>21 that, for example, nine credit hours or 12 credit</p> <p>22 hours?</p> <p>23 A. I don't really recall. It was somewhere</p> <p>24 in that neighborhood.</p> <p>25 Q. Okay. With respect to the tax classes</p> | <p style="text-align: right;">Page 15</p> <p>1 Q. Of the five to six classes that you took,</p> <p>2 what were the topics?</p> <p>3 A. It varied depending on that particular</p> <p>4 year, whether it was businesses, rental properties,</p> <p>5 sale of assets, depreciation, filing statuses,</p> <p>6 exemptions, itemized deductions. And so it would</p> <p>7 vary depending on which particular class you were</p> <p>8 taking that year, whether it was a basic, an</p> <p>9 intermediate, or an advanced class.</p> <p>10 Q. So you listed off probably more than six</p> <p>11 topics there. So say -- I'll use, for example, your</p> <p>12 rental property example. Was there like a 13-week</p> <p>13 class on rental property?</p> <p>14 A. It would probably cover a couple weeks of</p> <p>15 that 13 weeks might be over rental properties.</p> <p>16 Q. Okay. So of the topics you mentioned, a</p> <p>17 few of those, at least, might be covered in any one</p> <p>18 13-week period?</p> <p>19 A. Yes.</p> <p>20 Q. And you mentioned in particular</p> <p>21 depreciation being a topic for at least some segment</p> <p>22 of your classes with H&R Block. Well, let me ask</p> <p>23 that. Was that a segment of one of the classes you</p> <p>24 took from H&R Block?</p> <p>25 A. Yes.</p> |
| <p style="text-align: right;">Page 14</p> <p>1 that you took from H&R Block, can you give me an</p> <p>2 example of one of those classes?</p> <p>3 A. Well, they gave various classes depending</p> <p>4 on a person's experience. They had their basics,</p> <p>5 their intermediate, their advanced classes covering</p> <p>6 individual taxes, partnership taxes, corporate</p> <p>7 taxes.</p> <p>8 Q. Were these classes, for example, like an</p> <p>9 hour here and there? Were they full-day classes,</p> <p>10 multi-day classes? What kind of structure did they</p> <p>11 have?</p> <p>12 A. They were usually given over a 13-week</p> <p>13 period of time, a minimum of an hour, depending on</p> <p>14 the particular class that was being taken, usually</p> <p>15 two days -- two nights a week or two days a week.</p> <p>16 Q. Okay. So a typical class from H&R Block</p> <p>17 would have lasted for 13 weeks?</p> <p>18 A. Yes.</p> <p>19 Q. It would have involved about an hour on</p> <p>20 two different nights in the course of each week?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. About how many of those classes did</p> <p>23 you take from H&R Block?</p> <p>24 A. Probably five or six of them. And then I</p> <p>25 was actually an instructor for a number of years.</p> | <p style="text-align: right;">Page 16</p> <p>1 Q. Okay. Do you remember what they talked</p> <p>2 about depreciation in that class?</p> <p>3 A. That was the old, old, old depreciation</p> <p>4 method on your straight line depreciation, declining</p> <p>5 balance depreciation, sum of the years depreciation.</p> <p>6 So it was way back before MACRS and ACRS and all the</p> <p>7 changes.</p> <p>8 Q. You said that you taught some classes for</p> <p>9 H&R Block. Before we talk about that, real quick,</p> <p>10 have you taught any other classes than the classes</p> <p>11 for H&R Block?</p> <p>12 A. No.</p> <p>13 Q. So what did you teach for H&R Block?</p> <p>14 A. Depending on whether they were taking a</p> <p>15 basic class, an intermediate class, or an advanced</p> <p>16 class. I taught all of them.</p> <p>17 Q. About how many basic classes did you</p> <p>18 teach?</p> <p>19 A. Probably five, six.</p> <p>20 Q. About how many intermediate classes?</p> <p>21 A. Possibly about the same.</p> <p>22 Q. And advanced?</p> <p>23 A. Probably about the same.</p> <p>24 Q. When did you start teaching for H&R Block?</p> <p>25 A. Best I can recall, around '83, '84 up</p> |

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1 until around 2000.
 2 Q. When is the last class that you took from
 3 H&R Block?
 4 A. I really don't recall which year that
 5 would be. It's been awhile back. I was taking
 6 classes and teaching some too.
 7 Q. Okay.
 8 A. Taking more advanced classes while I was
 9 teaching maybe a basic class or an intermediate
 10 class.
 11 Q. Any particular reason that you stopped
 12 teaching for H&R Block in 2000?
 13 A. My dad had opened up our own tax office,
 14 and they figured it would be a conflict of interest
 15 for me to teach.
 16 Q. Okay. Let's talk briefly in kind of broad
 17 strokes about your -- the beginning of your work
 18 experience. You said you graduated high school in
 19 1973.
 20 A. Uh-huh.
 21 Q. What were your jobs thereafter?
 22 A. I worked for H&R Block for quite a long
 23 time. I was in manufacturing with several different
 24 companies.
 25 Q. Well, let's take it from 1973. From

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1 nineteen seventy -- like what did you do right after
 2 you graduated from high school?
 3 A. Took a year off and did nothing, I think.
 4 You know, but I probably in -- I was working with
 5 H&R Block '75, '74 part time. Started out as a
 6 courier for them, and then I started doing their
 7 checking of tax returns when I started teaching.
 8 And then just worked up doing various jobs with
 9 H&R Block.
 10 And went to work manufacturing. First
 11 year was in seventy -- oh, full time in '76.
 12 Q. With your work for the manufacturing
 13 companies, did you do anything related to federal
 14 taxes?
 15 A. No.
 16 Q. And you mentioned that you started with
 17 H&R Block part time in 1974, and your first job was
 18 acting as a courier?
 19 A. Yeah, just picking up and delivering tax
 20 returns.
 21 Q. Sure. When did you start working with tax
 22 returns?
 23 A. I was probably doing some of that
 24 probably, oh, starting in '75 after the first tax
 25 classes, somewhere around there.

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1 Q. And when did you stop working for
 2 H&R Block?
 3 A. 2000. I was working with some franchises
 4 up until 2003, 2004. Been awhile back.
 5 Q. Okay. Again, just for right now I'm
 6 interested in kind of broad strokes. Can you take
 7 me through the different job titles that you held
 8 with H&R Block over the course of that time?
 9 A. Let's see. Started out as a courier, then
 10 a tax preparer, then a math checker, instructor,
 11 then a theory checker and instructor.
 12 And they have different levels of tax
 13 preparers, and depending on your years of experience
 14 on whether -- I don't know if they had official
 15 titles back then. Now they do, but I'm not sure
 16 what they -- they just called us a tax preparer at
 17 that time. And then as your -- depending on your
 18 years of experience, you would do the more complex
 19 tax returns.
 20 Q. You mentioned one job, math checker. What
 21 does that involve?
 22 A. You would actually check the tax returns
 23 for any math errors.
 24 Q. Around when did you serve as a math
 25 checker?

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1 A. It's been awhile back. I'm not -- you
 2 know, '74, '75, you know. Because sometimes you'd
 3 do math checking and then theory checking, so --
 4 Q. Okay. And tell me about theory checking.
 5 What does that involve?
 6 A. That was probably -- started doing that
 7 probably a number of years later. It involved
 8 reviewing the tax return to see if in theory the tax
 9 return was done properly. After it was checked for
 10 math, then we'd look at the theory to check if
 11 they're right -- using the right types of
 12 depreciation based on the asset and its
 13 classification.
 14 Q. And around when did you serve as a theory
 15 checker?
 16 A. Been a long time ago. I can't give you
 17 any exact dates. It's been a long time.
 18 Q. So, Mr. Howell, once you started preparing
 19 tax returns for H&R Block, was tax return
 20 preparation always part of your job with H&R Block?
 21 Like I'm trying to get a --
 22 A. Probably, probably, yes.
 23 Q. Yeah. Okay. So like you were preparing
 24 tax returns for H&R Block as the preparer. And it
 25 sounds like you also served to check other people's

| | |
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| <p style="text-align: right;">Page 21</p> <p>1 work?</p> <p>2 A. I checked other people, yes, I would check</p> <p>3 other people's work.</p> <p>4 Q. At different times in the course of your</p> <p>5 career?</p> <p>6 A. Yes.</p> <p>7 Q. So when you left H&R Block in 2003 or</p> <p>8 2004, what did you do then?</p> <p>9 A. I worked with my dad at his -- at our tax</p> <p>10 office, Howell Tax Service.</p> <p>11 Q. Since you started working at Howell Tax</p> <p>12 Services, have you had any other jobs?</p> <p>13 A. No.</p> <p>14 Q. Have you earned income from any other</p> <p>15 source than Howell Tax Services since you started</p> <p>16 working there?</p> <p>17 A. Yes.</p> <p>18 Q. What are those sources?</p> <p>19 A. Securities, insurance, network marketing</p> <p>20 companies.</p> <p>21 Q. Anything else?</p> <p>22 A. Should -- I think that about covers it.</p> <p>23 Q. When you say you have earned income from</p> <p>24 securities, do you mean, for lack of a better word,</p> <p>25 brokering securities?</p> | <p style="text-align: right;">Page 23</p> <p>1 A. C-I-E-R-R-A, Cierra. It's a network</p> <p>2 marketing company.</p> <p>3 Q. Any other network marketing companies?</p> <p>4 A. RaPower.</p> <p>5 Q. Any others?</p> <p>6 A. Briefly with Melaleuca, just very briefly</p> <p>7 with them.</p> <p>8 Q. Melaleuca?</p> <p>9 A. Melaleuca. I can't even pronounce --</p> <p>10 can't even spell that one.</p> <p>11 Q. Okay. So we have Primerica, Ignite,</p> <p>12 Cierra, Shaklee, RaPower, Melaleuca. Any other</p> <p>13 network marketing companies?</p> <p>14 A. Not that I can recall.</p> <p>15 Q. And the only additional income you've</p> <p>16 received since working for Howell Tax Services is</p> <p>17 from securities, insurance, and network marketing?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Let's talk about Howell Tax</p> <p>20 Services a little bit. What kind of entity is</p> <p>21 Howell Tax Service?</p> <p>22 A. S corp.</p> <p>23 Q. Who owns it?</p> <p>24 A. My mother since my father's passed away,</p> <p>25 myself, and then some of my siblings.</p> |
| <p style="text-align: right;">Page 22</p> <p>1 A. No. Setting up clients' IRAs, rollover</p> <p>2 401(k)s into IRAs, doing annuities.</p> <p>3 Q. Is that on a commission basis?</p> <p>4 A. Yes.</p> <p>5 Q. And with respect to your income from</p> <p>6 insurance, is it similar to the securities?</p> <p>7 A. Yes, sell life insurance policies.</p> <p>8 Q. And you get a commission for that?</p> <p>9 A. Correct.</p> <p>10 Q. And how about the network marketing</p> <p>11 component? What network marketing companies have</p> <p>12 you been part of?</p> <p>13 A. Well, my security license is through</p> <p>14 Primerica, which is network marketing.</p> <p>15 Q. Any others?</p> <p>16 A. Ignite, which is stream energy. Cierra,</p> <p>17 they were a network marketing company, marketed pain</p> <p>18 patches and things like that.</p> <p>19 Q. Any others?</p> <p>20 A. I don't remember the name. One that did</p> <p>21 vitamins and stuff. Shaklee.</p> <p>22 Q. Could you spell that?</p> <p>23 A. S-H-A-K-L-E-Y, I believe it is. They do a</p> <p>24 lot of vitamins and stuff.</p> <p>25 Q. And actually could you spell Cierra?</p> | <p style="text-align: right;">Page 24</p> <p>1 Q. Are you familiar with an entity called</p> <p>2 Rocking H?</p> <p>3 A. That's Rocking H Enterprises, Inc., dba</p> <p>4 Howell Tax Service.</p> <p>5 Q. Okay. So Rocking H Enterprises, Inc.,</p> <p>6 does business as Howell Tax Services?</p> <p>7 A. Yes.</p> <p>8 Q. Does Rocking H do business under any other</p> <p>9 name?</p> <p>10 A. No.</p> <p>11 Q. Who's the primary decision-maker for</p> <p>12 Rocking H?</p> <p>13 A. Probably myself.</p> <p>14 Q. How long have you been in that role?</p> <p>15 A. Since my father passed away in 2013.</p> <p>16 Q. When you started working for Howell Tax</p> <p>17 Services in 2003 or 2004, what was your role there?</p> <p>18 A. Mainly tax preparation, consulting. We do</p> <p>19 payrolls for some companies. We do bookkeeping for</p> <p>20 companies.</p> <p>21 Q. Are those the primary services that Howell</p> <p>22 Tax Services provides?</p> <p>23 A. Yes.</p> <p>24 Q. And are those the primary services that</p> <p>25 Howell Tax Services has provided since 2003 or 2004?</p> |

Page 25

1 A. Yes.
 2 Q. Are there any other services that Howell
 3 Tax Services has provided since 2003 or 2004?
 4 A. I think that should cover it.
 5 Q. When you started off working for Howell
 6 Tax Services, about how many hours a week would you
 7 say you worked for the company?
 8 A. Forty.
 9 Q. Has that been consistent to present day?
 10 A. Yes. A little bit less now.
 11 Q. Around when would you say you reduced your
 12 schedule?
 13 A. Let's see. My oldest granddaughter is --
 14 I'd say probably, oh, four or five years ago when we
 15 started taking care of grandkids. So I go in late.
 16 Q. About how many hours a week do you take
 17 care of your grandkids?
 18 A. Well, my wife takes care of them all the
 19 time. I'm usually there till 9:00, 9:30, sometimes
 20 10:00 before I get away.
 21 Q. And then otherwise are you filling your
 22 workdays with Howell Tax Services --
 23 A. Yes.
 24 Q. -- tasks? Sorry. Let me finish the
 25 question. Otherwise, are you filling your day with

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1 Howell Tax Services tasks?
 2 A. Between that and then if I need to do any
 3 securities or if somebody wants some insurance or if
 4 I attend a meeting with one of the network marketing
 5 companies, so --
 6 Q. Do your hours for Howell Tax Services go
 7 up during tax preparation times?
 8 A. Yes.
 9 Q. About how many hours a week would you say
 10 you work during tax prep season?
 11 A. 60, 70 hours.
 12 Q. And for you, when -- when is tax prep
 13 season?
 14 A. Typically starts middle of January.
 15 Starts slowing down about a little bit after
 16 April 15, 16, 17. Then it'll pick back up typically
 17 September, October tax -- September, October during
 18 the end of tax time.
 19 Q. So that's -- for September and October,
 20 that's when folks are filing if they got an
 21 extension, right?
 22 A. Correct.
 23 Q. Are you an employee of Rocking H?
 24 A. Yes.
 25 Q. Currently about how many other employees

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1 does Rocking H have?
 2 A. Three.
 3 Q. Who are they?
 4 A. My brother, my daughter, and my mother.
 5 Q. And what's your brother's name?
 6 A. Daniel.
 7 Q. Howell?
 8 A. Howell.
 9 Q. Your daughter's name?
 10 A. Amber Bennett.
 11 Q. And your mother's?
 12 A. Jean Howell.
 13 Q. Since 2010 has Rocking H had any other
 14 employees?
 15 A. 2010. My son-in-law, Joel Bean, off and
 16 on.
 17 Q. Is his last name B-E-A-N?
 18 A. Bean, yes. Since 2010. I believe that's
 19 all.
 20 Q. And what about your father? To your
 21 knowledge, was he an employee?
 22 A. Yes. Ernest Howell.
 23 Q. All right. So to the best of your
 24 recollection, the employees that Rocking H has had
 25 since 2010 are you, your father, Ernest Howell,

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1 Daniel Howell, Amber Bennett, Jean Howell, and off
 2 and on Joel Bean. Correct?
 3 A. Yes.
 4 Q. Does Rocking H -- has Rocking H since 2010
 5 used any contractors for accounting and tax prep
 6 work?
 7 A. My sister in Florida, Pam Garfinkle.
 8 Q. Anyone else?
 9 A. No.
 10 Q. For Rocking H's employees and your sister,
 11 Ms. Garfinkle, when they e-file tax returns, do
 12 those tax returns say Howell Tax Service?
 13 A. Yes.
 14 MS. HEALY GALLAGHER: Off the record for a
 15 second.
 16 (Off record from 9:17 to 9:20)
 17 (Ms. Erin Hines joined the deposition
 18 by phone.)
 19 MS. HEALY GALLAGHER: Back on, please.
 20 BY MS. HEALY GALLAGHER:
 21 Q. All right, Mr. Howell, before the break we
 22 were talking a little bit about Howell Tax Services
 23 generally. And is it Service or Services?
 24 A. Service.
 25 Q. Service. Okay. Does Howell Tax Service

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| <p style="text-align: right;">Page 29</p> <p>1 have a social media presence?</p> <p>2 A. Yes.</p> <p>3 Q. What forms of social media does Howell Tax</p> <p>4 Service use?</p> <p>5 A. Website.</p> <p>6 Q. Does it have a Facebook page?</p> <p>7 A. Yes.</p> <p>8 Q. Twitter?</p> <p>9 A. No.</p> <p>10 Q. Instagram?</p> <p>11 A. No.</p> <p>12 Q. Snapchat?</p> <p>13 A. No.</p> <p>14 Q. Anything other than the website or</p> <p>15 Facebook?</p> <p>16 A. No. My kids do all of that, not me.</p> <p>17 Q. Who, Mr. Howell, is responsible for the</p> <p>18 content on the website for Howell Tax Services?</p> <p>19 A. Our web master is Accountants World.</p> <p>20 Q. And did Accountants World write the actual</p> <p>21 words on the website, or did you or someone else at</p> <p>22 Howell Tax Service do that?</p> <p>23 A. We probably did some of it way back when</p> <p>24 we first set it up. We might have added or changed</p> <p>25 some of it over the years, but the basic -- a lot of</p> | <p style="text-align: right;">Page 31</p> <p>1 Q. All right, Mr. Howell, you're being handed</p> <p>2 what's been marked Plaintiff's Exhibit 583. Would</p> <p>3 you take a look at that and let me know when you're</p> <p>4 ready.</p> <p>5 A. Okay.</p> <p>6 Q. Mr. Howell, do you recognize Plaintiff's</p> <p>7 Exhibit 583?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. Website page.</p> <p>11 Q. Does this appear to be the Facebook page</p> <p>12 or a post from it for Howell Tax Service?</p> <p>13 A. Yes.</p> <p>14 Q. So this is the Facebook page that you</p> <p>15 maintain on behalf of Howell Tax Service?</p> <p>16 A. Yes.</p> <p>17 Q. And this post, Mr. Howell, is dated</p> <p>18 March 25th, 2011. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Yes? Okay. So you had this Facebook page</p> <p>21 at least as of this date, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And, you know, this one says "Top Five</p> <p>24 Online 2011 Tax Scams." Did I read that correctly?</p> <p>25 A. Yes.</p> |
| <p style="text-align: right;">Page 30</p> <p>1 the basic information and stuff goes through</p> <p>2 Accountants World.</p> <p>3 Q. And when did Howell Tax Service first put</p> <p>4 up its website?</p> <p>5 A. Long time ago. I can't give you an exact</p> <p>6 date.</p> <p>7 Q. Did you do that or did your father do</p> <p>8 that?</p> <p>9 A. My father might have. We might have</p> <p>10 worked together talking to them to do our website.</p> <p>11 They do lots of websites for tax companies, CPAs,</p> <p>12 accountants, so --</p> <p>13 Q. And what about the Howell Tax Service</p> <p>14 Facebook page?</p> <p>15 A. I usually do that. Sometimes my</p> <p>16 son-in-law will post something to it.</p> <p>17 Q. Who is it that started the Facebook page?</p> <p>18 A. I probably did.</p> <p>19 Q. Do you remember around when you started</p> <p>20 it?</p> <p>21 A. I really couldn't say.</p> <p>22 Q. And your son-in-law that you mentioned, is</p> <p>23 that Joel Bean?</p> <p>24 A. Yes.</p> <p>25 (Exhibit 583 marked)</p> | <p style="text-align: right;">Page 32</p> <p>1 Q. Is this the kind of post that you would</p> <p>2 post or that your son-in-law would post?</p> <p>3 A. I would post.</p> <p>4 Q. Okay. What kinds of things would your</p> <p>5 son-in-law post?</p> <p>6 A. If he happened to find an article that was</p> <p>7 pertaining to tax information that somebody might be</p> <p>8 interested in.</p> <p>9 (Exhibit 584 marked)</p> <p>10 Q. Mr. Howell, you're being handed what's</p> <p>11 been marked Plaintiff's Exhibit 584. Take a look at</p> <p>12 that, please, and let me know when you're ready.</p> <p>13 A. Okay.</p> <p>14 Q. All right. So this is also a screenshot</p> <p>15 of the Howell Tax Service Facebook page, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. To your knowledge, did you post</p> <p>18 this?</p> <p>19 A. Possibly.</p> <p>20 Q. And it may have been your son-in-law?</p> <p>21 A. Yes.</p> <p>22 Q. Mr. Howell, if your son-in-law ever posted</p> <p>23 something to the Howell Tax Service Facebook page</p> <p>24 that you did not want to appear there, would you</p> <p>25 take it off?</p> |

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| <p style="text-align: right;">Page 33</p> <p>1 A. Yes.</p> <p>2 (Exhibit 585 marked)</p> <p>3 Q. You've been handed, Mr. Howell, what's</p> <p>4 been marked Plaintiff's Exhibit 585. Would you take</p> <p>5 a look at that, please, and let me know when you're</p> <p>6 done.</p> <p>7 A. Okay.</p> <p>8 Q. Plaintiff's Exhibit 585 is also a</p> <p>9 screenshot from the Howell Tax Service Facebook</p> <p>10 page, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And this post entitled "How Not to Choose</p> <p>13 a Tax Preparer, 10 Red Flags to Avoid," is dated</p> <p>14 January 9, 2015, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Do you -- present day are you continuing</p> <p>17 to maintain the Howell Tax Service Facebook page?</p> <p>18 A. Yes.</p> <p>19 Q. Mr. Howell, do you have any formal</p> <p>20 designations, professional designations?</p> <p>21 A. EA.</p> <p>22 Q. And what is an EA?</p> <p>23 A. Enrolled agent with the U.S. Treasury</p> <p>24 Department of Internal Revenue Service.</p> <p>25 Q. What does it take to obtain the</p> | <p style="text-align: right;">Page 35</p> <p>1 Okay. So you took online courses to study</p> <p>2 for the EA exam. Did you do any other -- other than</p> <p>3 the online courses, did you do any other education</p> <p>4 or preparation for the EA exam?</p> <p>5 A. Reviews, tax books and stuff that we</p> <p>6 maintain in the office, the different publications,</p> <p>7 Publication 17, publications on corporate taxes,</p> <p>8 partnership taxes and trusts, just a lot of tax</p> <p>9 information because I know a lot of it's covered on</p> <p>10 all four sections of the EA exam.</p> <p>11 Q. What are the four sections of the EA exam?</p> <p>12 A. I believe it's individual, partnership,</p> <p>13 ethics, corporations and trusts. Not -- been a long</p> <p>14 time since I took that test, but I do believe it's</p> <p>15 basically the individual taxes, partnership taxes,</p> <p>16 corporate taxes, and ethics, I believe is how it's</p> <p>17 structured.</p> <p>18 Q. When did you take the exam?</p> <p>19 A. 2001, I believe.</p> <p>20 Q. Did you pass it?</p> <p>21 A. Yes.</p> <p>22 Q. On the first try?</p> <p>23 A. Yes. With no -- I was teasing my sister</p> <p>24 who failed the partnership part, and so she had to</p> <p>25 retake it.</p> |
| <p style="text-align: right;">Page 34</p> <p>1 designation EA?</p> <p>2 A. A lot of -- a lot of studying and to pass</p> <p>3 a extensive exam with the IRS and maintain lots of</p> <p>4 continuing education classes.</p> <p>5 Q. Okay. So for the study to become an EA,</p> <p>6 are those the courses you took from H&R Block?</p> <p>7 A. I believe to study for that I took some</p> <p>8 online courses. Can't remember the company that did</p> <p>9 it. It was a company that specializes in preparing</p> <p>10 people for the enrolled agent's exam. They do --</p> <p>11 for a lot of different types of license, they do a</p> <p>12 lot of these online courses.</p> <p>13 Q. And you didn't mention that earlier in the</p> <p>14 formal education that we talked about.</p> <p>15 A. Online courses I don't really -- formal</p> <p>16 education to me is when I sit in a classroom with a</p> <p>17 professor or a teacher. I guess now formal</p> <p>18 education is online too. I just never -- I'm</p> <p>19 old-fashioned. I associate formal session as you're</p> <p>20 sitting in a classroom, the professor, the</p> <p>21 instructor's up there. To me that's formal. This</p> <p>22 is informal. You do it online.</p> <p>23 Q. That's fine. And I'm not -- simply --</p> <p>24 simply highlighting we may need to talk about a</p> <p>25 couple of other topics. That's it.</p> | <p style="text-align: right;">Page 36</p> <p>1 Q. Is it a multi-day exam?</p> <p>2 A. Yes.</p> <p>3 Q. How many days?</p> <p>4 A. Two days, to the best that I can recall.</p> <p>5 It was in IRS headquarters in Dallas, I believe I</p> <p>6 took it at.</p> <p>7 Q. So did you also obtain the designation in</p> <p>8 2001?</p> <p>9 A. Yes.</p> <p>10 Q. For the online prep course you took, was</p> <p>11 it -- tell me about that course. How long was it?</p> <p>12 Was it multiple courses or one course?</p> <p>13 A. Multiple courses. It just -- took it as</p> <p>14 many days, many nights. I mean, you didn't really</p> <p>15 have a time frame. You just studied this particular</p> <p>16 topic until you were comfortable with it, and you</p> <p>17 took a series of tests.</p> <p>18 Q. Okay. So was it kind of like</p> <p>19 self-directed, like you could decide what you wanted</p> <p>20 to review on a particular night?</p> <p>21 A. Yes.</p> <p>22 Q. About how long did you prepare for the EA</p> <p>23 exam before you took it?</p> <p>24 A. Probably two years. There was a lot of</p> <p>25 stuff on it.</p> |

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| <p style="text-align: right;">Page 37</p> <p>1 Q. So when you say you took the course 2 online, it sounds to me like, correct me if I'm 3 wrong, there were like -- there was like a video on 4 a particular topic and you could decide when you 5 wanted to watch that video. Is that right? 6 A. I believe most of them then -- this is -- 7 we had a series of disks that we would put in the 8 computer and put in that disk for those particular 9 topics and read the information, take little exams. 10 And then depending on how well you did on the exams, 11 you go back over it. 12 Q. I was going to say, that online course in 13 2001 sounds pretty advanced. But CD-ROM sounds -- 14 A. Yeah. 15 Q. -- more consistent. 16 A. To me anything on a computer is almost 17 online anymore. It's just -- 18 Q. Sure. Okay. So then after you obtained 19 the EA designation, have you had that designation 20 consistently since 2001? 21 A. Yes. 22 Q. And you said that you have to do lots of 23 continuing education. 24 A. Correct. 25 Q. What are the continuing education</p> | <p style="text-align: right;">Page 39</p> <p>1 A. Yes. 2 Q. And what sort -- what topics do you do 3 your continuing education in? 4 A. Various. Corporations, partnerships, sole 5 proprietorships, rentals, ethics, sale of business 6 assets, just -- just go down the list and see what I 7 think I need a refresher course on and that's the 8 one I choose. 9 Q. Do you keep records of the continuing 10 education classes you've taken since you got your 11 designation? 12 A. I've tried to. I tried to save the 13 certificates and any courses that I printed out, the 14 tests that I did with them. Sure I've missed some 15 without keeping them. Just, you know, you get in a 16 hurry, but I try to. 17 Q. Okay. Mr. Howell, so we're here today in 18 the context of the United States lawsuit against 19 RaPower3 and other folks. And you mentioned 20 RaPower3 as one of the network marketing companies 21 that you're involved in. 22 When did you first hear about RaPower3? 23 A. Believe 2010. 24 Q. How did you first hear about it? 25 A. One of my tax clients had went to a</p> |
| <p style="text-align: right;">Page 38</p> <p>1 requirements to maintain the EA status? 2 A. 72 hours every three years, at least 17 3 hours each year. 4 Q. At least how many hours? 5 A. 17. So usually I do 24 each year to get 6 all 72. 7 Q. Other than the continuing education 8 requirements, are there any other requirements in 9 order for you to maintain the EA designation? 10 A. File all your tax returns. That's 11 basically the requirements. Mostly it's your 12 continuing education, make sure you're current with 13 all tax filings. 14 Q. Since 2010 where do you get your 24 hours 15 of continuing education each year? 16 A. Different continuing ed companies, like 17 WebCE is one of them. 18 Q. Is there any requirement that any of the 19 training be live? 20 A. There's some what they consider classroom 21 training where you can do one specific topic. Until 22 you've completed that, you can't go on to the next 23 one. Then you take your final exam. 24 Q. Do you do any of your continuing education 25 live?</p> | <p style="text-align: right;">Page 40</p> <p>1 seminar given by RaPower3 that she had went to and 2 they had talked about the network marketing of the 3 solar systems as well as the tax benefits. And she 4 asked me if I knew anything about it, and I said no. 5 Q. Who was that? 6 A. Just one of my tax clients. 7 Q. What's her name? 8 A. She might not want that disclosed. 9 Q. Well, you're under oath today, Mr. Howell, 10 so what's her name, please? 11 A. Mrs. Roe. 12 Q. R-O-E? 13 A. R-O-E. 14 Q. First name Janet? 15 A. Yes. 16 Q. You said that was in about 2010? 17 A. I believe it was 2010 because she asked me 18 a number of times before I even looked at any 19 information about them. 20 Q. Well, that's my next question. So what 21 did you do next after Ms. Roe came to you with the 22 first information about RaPower3? 23 A. It was probably in 2011 before I even -- 24 before I even looked at it. Then I looked at 25 their -- I believe it was somewhere in that time</p> |

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| <p style="text-align: right;">Page 41</p> <p>1 frame I looked at their website, did a PDF of their 2 contracts, information that they had on their 3 website, looked at the tax law pertaining to energy 4 credits for solar, wind, geothermal, coal, nuclear, 5 whether the new or whether it was refurbished 6 equipment, the treasury regulations for it. 7 Q. Okay. Do you remember about what time of 8 year in 2010 you first heard about this from 9 Ms. Roe? 10 A. She probably asked me during tax season, 11 and I probably said I don't have time to look at it. 12 It was one year that she asked, and I said I don't 13 have time to even look at it, I'm too busy right 14 now. 15 Q. So what made you turn to it the next year? 16 A. She kept after me. And then there was 17 another client that was -- they're all part of the 18 Ignite network marketing group that I've been part 19 of for a long time. And so I've had a number of 20 clients that are with Ignite, so somebody else said, 21 hey, Janet wanted to know if you'd looked at this. 22 Q. And who was that? 23 A. I don't recall. I just know it was 24 another one. 25 Q. You mentioned that Ms. Roe had gone to a</p> | <p style="text-align: right;">Page 43</p> <p>1 A. Yes. 2 Q. You identified a couple of different 3 things that you did to start investigating it. You 4 mentioned that you reviewed the website. Did you 5 mean the RaPower3 website? 6 A. Yes. 7 Q. Did you review any other websites? 8 A. IRS.gov looking up the tax laws associated 9 with solar energy, geothermal, wind, treasury 10 regulations. 11 Q. Okay. Any other websites that you recall? 12 A. No. 13 Q. You said that you reviewed contracts. 14 What contracts were those? 15 A. Their purchase agreements, operation 16 agreements. 17 Q. Did you get those contracts from the 18 RaPower3 website? 19 A. Yes. 20 Q. All right. Other than reviewing the 21 websites that we've discussed, looking at the 22 contracts that we've discussed, and your independent 23 review of tax law and regulations, did you do 24 anything else to research this company or the 25 opportunity?</p> |
| <p style="text-align: right;">Page 42</p> <p>1 seminar for RaPower3? 2 A. Yeah, a meeting, a seminar or something. 3 Q. Do you know who gave the presentation at 4 that meeting? 5 A. I wasn't there, so I really couldn't tell 6 you that. 7 Q. Do you not know? 8 A. I wasn't there. I mean, I can't say for 9 sure who gave it because I was -- I wasn't there. 10 All I could do is hearsay from what Janet said. 11 Q. Did you ever attend a meeting or seminar 12 for RaPower3 here in Texas? 13 A. Not that I can recall. 14 Q. Have you ever hosted a meeting to discuss 15 RaPower3 here in Texas? 16 A. Hosted a meeting. Not that I recall. 17 Q. Have you ever attended any sort of meeting 18 or gathering with a representative of RaPower3 who 19 came to Texas? 20 A. No. 21 Q. Do you recall when in 2011 you started 22 responding to Ms. Roe and doing some research on 23 RaPower3? 24 A. Probably during the summer. 25 Q. So after tax season?</p> | <p style="text-align: right;">Page 44</p> <p>1 A. Trying to remember back then. Probably 2 looked at both the company and the network marketing 3 part of it. 4 Q. What do you mean by that? 5 A. The commission structures. 6 Q. Did you talk with anyone at RaPower3? 7 A. I don't recall. 8 Q. And we'll keep that to like in 2011. In 9 2011 did you talk with anyone at RaPower3? 10 A. I don't really recall if I did or not. 11 Q. In 2011 did you ever speak with Gregory 12 Shepard? 13 A. I might have e-mailed him a question or 14 something or -- I could have called him. That's 15 been a number of years back, so I don't recall. 16 Q. Sure. In 2011 did you ever speak with 17 Roger Freeborn? 18 A. I might have. I'm not positive. 19 Q. Did you ever speak with Neldon Johnson in 20 2011? 21 A. No. 22 Q. In 2011 what, if any, research did you do 23 on International Automated Systems, Inc.? 24 A. 2011. I don't know if it was '11 or '12 I 25 looked up IAUS. I'm not sure what year.</p> |

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| <p style="text-align: right;">Page 45</p> <p>1 Q. Okay. Well, when you first -- what did 2 you look at whenever you did look up IAUS? 3 A. I looked at their website that they had 4 up. I guess they still have it up. I haven't 5 looked at it lately. 6 Q. Is that IAUS.com? 7 A. I believe so. 8 Q. In checking out IAS, did you do anything 9 else? 10 A. Not that I recall. 11 Q. In 2011 what, if any, research did you do 12 on the company LTB, LLC? 13 A. I know I looked up something on them. I'm 14 not sure what year. It might have been '11. 15 Because they're mentioned in the contracts. 16 Q. Even if it wasn't in 2011, what, if any, 17 research have you done on LTB in 2011 or since that 18 date? 19 A. I think I just did a Google search or 20 something. Been awhile back. 21 Q. Do you recall if you found anything? 22 A. I'm sure I did. I think it showed who the 23 officers were. I don't recall a lot of information 24 on it. 25 Q. Do you remember who the officers were?</p> | <p style="text-align: right;">Page 47</p> <p>1 in IAS? 2 A. No. 3 Q. So to your knowledge, as of today you own 4 about 10,000 shares? 5 A. Yes. 6 Q. Mr. Howell, at any point did you research 7 Neldon Johnson's background? 8 A. Yes. 9 Q. What did you do to conduct that research? 10 A. I did a Google search. 11 Q. Anything else? 12 A. No. 13 Q. What, if anything, did you find out about 14 Mr. Johnson with the Google search? 15 A. He had a number of patents he had done. 16 He had been in some bankruptcy. He had had SEC file 17 a lawsuit against him. Just what's out there on the 18 internet. 19 Q. Do you recall when you did this Google 20 search? 21 A. No. 22 Q. Do you know if it was before or after you 23 bought lenses yourself? 24 A. I don't. I don't really recall. 25 Q. Was it closer to 2012 or closer to present</p> |
| <p style="text-align: right;">Page 46</p> <p>1 A. I couldn't say for sure. 2 Q. Do you remember having found anything else 3 with respect to LTB, LLC? 4 A. Not that I recall. 5 Q. And just to close that loop on IAUS, at 6 any time since 2011 have you conducted any research 7 on IAUS other than reviewing its website? 8 A. I'm sure I have. I just don't really 9 recall, but I'm sure I've looked at something on 10 them, looked up their ticker symbol to see if there 11 was a SEC filing. I think I looked at -- I'm not 12 sure when it was. 13 Q. Do you remember what, if any, information 14 you found about IAS? 15 A. It's been too long back. I don't really 16 recall a lot of that. 17 Q. Have you ever bought any shares of IAS? 18 A. Yes. 19 Q. How many shares do you own? 20 A. 10,000. It's penny stock. 21 Q. When did you buy that? 22 A. 2012, I believe. I'm not sure. 23 Q. Have you bought any stock since 2012? 24 A. I think I've bought it a couple of times. 25 Q. So have you ever sold it, sold any stock</p> | <p style="text-align: right;">Page 48</p> <p>1 day? 2 A. No, it was closer to 2012. 3 Q. Are you familiar with the name Roger 4 Freeborn? 5 A. Yes. 6 Q. What do you know about Roger Freeborn? 7 A. We've talked together. 8 Q. When? 9 A. I can't give you exact times. I think I 10 met him at the RaPower convention in 2012, I think. 11 He was there. 12 Q. Did you have any communications with him 13 after the RaPower3 convention in 2012? 14 A. I'm sure I have. 15 Q. Are you still in touch with him today? 16 A. No, not really. 17 Q. Did you check out Mr. Freeborn's 18 background at all? 19 A. No. 20 Q. Do any research on Mr. Freeborn? 21 A. No. 22 Q. And you're familiar with the name Greg 23 Shepard? 24 A. Yes. 25 Q. You've met Mr. Shepard?</p> |

| | |
|--|--|
| <p style="text-align: right;">Page 49</p> <p>1 A. Yes.</p> <p>2 Q. When did you first meet in person?</p> <p>3 A. At the convention.</p> <p>4 Q. And you testified earlier that you may</p> <p>5 have spoken with him in 2011 but you're not sure.</p> <p>6 Is the convention the first time you definitively</p> <p>7 recall having --</p> <p>8 A. Yes.</p> <p>9 Q. -- spoken with him?</p> <p>10 A. Yes.</p> <p>11 Q. Did you do any research on Mr. Shepard's</p> <p>12 background?</p> <p>13 A. Yes.</p> <p>14 Q. What research did you do?</p> <p>15 A. Google search. Everybody does Google</p> <p>16 searches. And he was with Bigger, Faster, Stronger.</p> <p>17 It's an organization a number of coaches, teachers</p> <p>18 belong to. That's all I really remember looking at.</p> <p>19 Q. In your research did you find out or did</p> <p>20 you see any indication that Mr. Shepard had any sort</p> <p>21 of experience or background in solar energy</p> <p>22 technology?</p> <p>23 A. No.</p> <p>24 Q. In your research about Mr. Shepard, did</p> <p>25 you find any indication he had experience or</p> | <p style="text-align: right;">Page 51</p> <p>1 Q. Did you ever ask Mr. Johnson or anyone</p> <p>2 else what qualifications he had in any field related</p> <p>3 to solar energy technology?</p> <p>4 A. I never really talked to Mr. Johnson that</p> <p>5 much.</p> <p>6 Q. Did you ask anyone else about</p> <p>7 Mr. Johnson's qualifications?</p> <p>8 A. I don't believe so.</p> <p>9 Q. How come?</p> <p>10 A. I just didn't think about asking anybody</p> <p>11 else.</p> <p>12 Q. Did you ever ask Mr. Johnson or anyone</p> <p>13 else about his background or experience in the field</p> <p>14 of federal income taxes?</p> <p>15 A. No.</p> <p>16 Q. Why not?</p> <p>17 A. He didn't give any tax advice.</p> <p>18 Q. Did you ever ask Greg Shepard about his</p> <p>19 experience in the solar energy technology field?</p> <p>20 A. No.</p> <p>21 Q. Why not?</p> <p>22 A. He didn't develop it.</p> <p>23 Q. Did you ever ask Mr. Shepard or anyone</p> <p>24 else about his knowledge and experience in the field</p> <p>25 of federal income taxes?</p> |
| <p style="text-align: right;">Page 50</p> <p>1 knowledge about federal income taxes?</p> <p>2 A. No.</p> <p>3 Q. With respect to Neldon Johnson and your</p> <p>4 research on Mr. Johnson, did you see any indication</p> <p>5 that he had any experience or background in federal</p> <p>6 taxes?</p> <p>7 A. No.</p> <p>8 Q. In your research into Mr. Johnson, did you</p> <p>9 see any indication that he had any experience or</p> <p>10 background in solar energy technology?</p> <p>11 A. Yes, when he had done the patent on the</p> <p>12 solar lenses, and he had written a white paper on</p> <p>13 solar energy.</p> <p>14 Q. Okay. So with Mr. Johnson, you saw that</p> <p>15 he had a patent on solar lenses. Yes?</p> <p>16 A. Yes.</p> <p>17 Q. And you saw that he had written a white</p> <p>18 paper?</p> <p>19 A. Yes.</p> <p>20 Q. Did you see anything else to indicate that</p> <p>21 he had knowledge or experience with respect to solar</p> <p>22 energy technology?</p> <p>23 A. I believe I read an article where he was</p> <p>24 involved in a -- some solar energy with a city in</p> <p>25 California in developing something.</p> | <p style="text-align: right;">Page 52</p> <p>1 A. No, because they didn't give out tax</p> <p>2 advice.</p> <p>3 Q. You said that you spoke with Mr. Freeborn</p> <p>4 at the convention in 2012. Did you -- was that like</p> <p>5 general chitchat, or did you talk about the</p> <p>6 substance of the solar lenses or anything about the</p> <p>7 program?</p> <p>8 A. I probably talked about the network part</p> <p>9 of it, how it was set up and the commission</p> <p>10 structures or something like that, but I think more</p> <p>11 with Mr. Freeborn it was just chitchat because I</p> <p>12 don't believe he was an officer or director or</p> <p>13 anything.</p> <p>14 Q. Did you ever ask Mr. Freeborn or anyone</p> <p>15 else about his background with respect to federal</p> <p>16 income taxes?</p> <p>17 A. No.</p> <p>18 Q. Did you ever ask Mr. Freeborn or anyone</p> <p>19 else about Mr. Freeborn's background in solar energy</p> <p>20 technology?</p> <p>21 A. No.</p> <p>22 Q. Did you ever ask anyone about LTB, LLC's</p> <p>23 experience or expertise with solar energy</p> <p>24 technology?</p> <p>25 A. I don't recall.</p> |

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1 Q. Why not?
 2 A. I just don't recall if I ever did or not.
 3 Long time ago.
 4 Q. Sure.
 5 A. Many conversations. What all the topics
 6 were, I don't know.
 7 Q. If you did not ask anyone about LTB, LLC's
 8 background, experience, or expertise in solar energy
 9 technology, do you have any explanation for why?
 10 A. Really don't have an answer.
 11 Q. Do you know who owns LTB, LLC?
 12 A. I'd have to look it up again. I'm sure
 13 it's probably Neldon Johnson or somebody associated
 14 with him.
 15 Q. And why do you think that?
 16 A. Well, because he -- owner of the RaPower3,
 17 the IAUS, so I would assume you try to keep control
 18 of companies you're working with.
 19 Q. Okay. So to your knowledge or what you
 20 think sitting here today is that Neldon Johnson is
 21 the owner of LTB, LLC?
 22 A. Or part owner. I wouldn't say he's the
 23 total owner. I mean --
 24 Q. I'm just asking for your understanding.
 25 And also to your understanding, Mr. Johnson owns

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1 some or all of RaPower3?
 2 A. Yes.
 3 Q. To your understanding, Mr. Johnson owns
 4 some or all of International Automated Systems?
 5 A. Yes.
 6 Q. You mentioned, Mr. Howell, that Neldon
 7 Johnson had written a white paper on solar energy
 8 technology. Do you recall reading that white paper?
 9 A. Yes.
 10 Q. Where did you get it from?
 11 A. Off of their website.
 12 Q. Off the RaPower3.com website?
 13 A. Yes.
 14 Q. Did you understand the white paper?
 15 A. No. Lot of technical.
 16 Q. Mr. Howell, have you ever done any
 17 research on solar energy technology that is not
 18 related to RaPower3?
 19 A. Yes, some.
 20 Q. What has that research involved?
 21 A. Different solar energy companies, the
 22 different ways they use technology to produce it,
 23 the types of lens, the positioning of lens, whether
 24 you get a small one to put on your house or to do a
 25 big solar field like in California.

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1 Q. Any other topics?
 2 A. Just too -- the details of how it all
 3 works is -- not an engineer, so I wouldn't
 4 understand it if I read it.
 5 Q. Do you recall what other solar energy
 6 companies you looked at?
 7 A. Oh, everyone knows Solyndra.
 8 Q. Any others than Solyndra?
 9 A. There are some. I don't recall their
 10 names. They're in the news every now and then,
 11 different solar companies that have started up
 12 and -- and some are in different states putting in
 13 different types of panels or they sell to
 14 individuals to put them on your rooftop.
 15 Q. You mentioned that you checked out
 16 different ways to produce energy from the sun. Are
 17 you familiar with the term photovoltaic?
 18 A. Yes.
 19 Q. What's your understanding of a
 20 photovoltaic --
 21 A. To --
 22 Q. Sorry. Let me finish the question.
 23 What's your understanding of a photovoltaic panel?
 24 A. The design of the panel and how it
 25 reflects the sun.

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1 Q. Do you have an understanding of the phrase
 2 concentrating solar power?
 3 A. Basically, where it's concentrated through
 4 a beam to focus the sun's rays on a given point.
 5 Q. To your knowledge, Mr. Howell, is the
 6 RaPower3 system one that is billed as being a
 7 concentrated solar energy technology?
 8 A. I would -- I believe so. I'm not
 9 positive. Read different -- too much of -- too much
 10 from different areas.
 11 Q. Well, then how about this. Walk me
 12 through how you think the solar lenses we're talking
 13 about here, how they are supposed to convert energy
 14 from the sun into a finished product.
 15 A. The solar lenses that are on the towers
 16 are then the -- with the rotation of the towers
 17 focus energy to a heat concentrator which then goes
 18 to the turbines. I'm not an engineer, so I really
 19 don't know how it -- how it all works.
 20 And so it's -- I've seen the towers. I've
 21 seen how they can focus the rays sun into a focal
 22 point. They actually set a piece of wood on fire.
 23 So I do know that it -- that, and I've seen how
 24 they're developing the concentrator to use in part
 25 of their system.

| | |
|---|---|
| <p style="text-align: right;">Page 57</p> <p>1 It's like how does a computer work. I 2 couldn't tell you that. All I know is I can use it. 3 Same way with that technology. I'm not an engineer, 4 but I -- I don't know all the terminology or 5 anything on how it all works. 6 Q. Have you ever seen a lens being used in 7 any system that generates electricity? 8 A. Did I actually go and see it? No. 9 Q. Have you ever heard that a lens was used 10 in any system that ended up generating electricity? 11 A. Yes. 12 Q. Where did you hear that from? 13 A. Probably RaPower. They have a house that 14 I believe they say is -- utilizes one of their 15 systems to do their energy. 16 Q. Have you ever heard of any lens being used 17 in any system to generate electricity for use 18 anywhere other than that house? 19 A. Not that I recall. 20 Q. When you say you heard of that from 21 RaPower, who at RaPower? 22 A. I believe it was Greg Shepard had sent out 23 some pictures of the -- of the house, the -- there 24 was -- I'm trying to remember what it all was. When 25 the cabling -- it's been awhile back since I looked</p> | <p style="text-align: right;">Page 59</p> <p>1 facts of this case while we were on that break? 2 A. No. 3 Q. Are there any answers to my questions so 4 far today that you would like to clarify or amplify 5 or anything like that? 6 A. No. 7 Q. Before the break we were talking about 8 whether you had heard of or seen lenses in use as 9 part of the system to produce electricity. 10 Have you ever seen any lens be used as 11 part of a system that ultimately resulted in heat 12 being provided to a structure? 13 A. No. 14 Q. Have you ever seen any lens be used as 15 part of a system to cool a structure? 16 A. No. 17 Q. Have you ever seen a lens be used as part 18 of a system that creates clean water? 19 A. No. 20 Q. Have you ever seen a lens be used as part 21 of a system that heats water? 22 A. I think they produced a YouTube that 23 showed that. I'm not positive, but I believe I saw 24 maybe a YouTube that they had put out that showed 25 that.</p> |
| <p style="text-align: right;">Page 58</p> <p>1 at that, but I know they had a building where the 2 energy ran into the turbine. I don't remember all 3 of it, but they -- it's been a number -- a couple 4 years back that they had sent it out. Then it was 5 actually on their website too in addition to that. 6 Q. Did you ever ask to see any documentation 7 or other support that would show that any lens was 8 used in a system that produced electricity for that 9 house? 10 A. I don't recall ever asking for anything. 11 Q. Any particular reason you didn't ask for 12 that? 13 A. Didn't really think about it. 14 Q. To your knowledge, has anyone ever been 15 paid for the electricity that you heard was going to 16 that house? 17 A. Not that I know of. 18 MS. HEALY GALLAGHER: Off the record, 19 please. 20 (Recess from 10:21 to 10:38) 21 MS. HEALY GALLAGHER: Back on the record, 22 please. 23 BY MS. HEALY GALLAGHER: 24 Q. Mr. Howell, we're back on the record after 25 a quick break. Did you speak with anyone about the</p> | <p style="text-align: right;">Page 60</p> <p>1 Q. When you say a YouTube, do you mean a 2 video that you saw online? 3 A. Yes. 4 Q. And you think you've seen a video of a 5 lens being used in a system that produced hot water? 6 A. And it was heating the water. I just 7 briefly -- didn't look at the whole thing. It was 8 just a YouTube clip showing the water being heated. 9 I didn't look at all of it. It was just -- 10 Q. So can you describe to me what you did see 11 in that video? 12 A. Just showed the -- I believe the water 13 being heated through a solar panel. 14 Q. A lens? 15 A. A solar panel. 16 Q. What do you mean when you say solar panel? 17 A. A lens, a solar panel. It's been awhile 18 back, so I don't recall exactly all of it in 19 context. 20 Q. How do you know -- was the -- were the 21 sun's rays going through the lens directly to water? 22 A. It was just like 15, 30 seconds, just a 23 little YouTube, and I don't exactly remember how 24 it -- something similar to that. But that's all. 25 Q. I'm just trying to understand what you</p> |

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1 saw.

2 A. It was just briefly that I saw it. It was
3 just IAUS or RaPower has a number of mini YouTube
4 videos that they've done over their technology,
5 their manufacturing process, their different
6 components and things. It was just a brief -- so I
7 don't really remember all of it. I might have seen
8 a series of them at one time.

9 Q. So, for example, I am familiar with a
10 video where a turbine is spinning and it looks like
11 steam is coming out of the nozzles. Is that what
12 you're thinking of?

13 A. I think I've seen one of those too. It's
14 just I've probably watched 40, 50 different ones at
15 different times, so --

16 Q. Right. And what I'm trying to understand
17 is, so the video that you recall having seen of a
18 lens being used in a system to generate hot water,
19 is that the video of the turbines spinning with
20 steam coming out of it?

21 A. I believe it was different from that.

22 Q. Okay. So what did you actually see?

23 A. It was just very, very brief. And I
24 probably watched a number of different ones, so --

25 Q. Right. And what I want to know is what

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1 you saw. So if you don't remember what you saw,
2 that's fine.

3 A. I really can't tell you exactly what it
4 was, you know. It's not like I kept playing it over
5 and over and over. No, I don't really recall.

6 Q. All right. So have you ever heard of any
7 lens being used in a system to generate heat for a
8 structure?

9 A. No.

10 Q. Have you ever heard of any lens being used
11 in a system to cool a structure?

12 A. I think I've already answered that
13 question. No.

14 Q. Have you ever heard of any lens being used
15 in a system to create clean water?

16 A. I'm thinking create the steam, then that
17 would create the clean water, so --

18 Q. So is the answer yes or no?

19 A. Going back to the brief clip I saw, it's
20 in theory that if you can heat the water, you can
21 purify it.

22 Q. Whose theory is that?

23 A. I think it's general theory of science
24 that if you can heat water, you can purify it
25 through the steam itself that comes off. It's going

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1 to be more pure and leave the residues down.

2 Q. So did you hear from anyone at RaPower3,
3 IAS, LTB that a lens was used in a system that
4 created purified water?

5 A. No.

6 Q. Have you ever heard of a lens being used
7 in a system to heat water?

8 A. No.

9 Q. Okay. Mr. Howell, you touched earlier on
10 how the RaPower3 program works. You talked about
11 contracts. You talked about -- I believe you talked
12 about commissions.

13 What's your understanding about how it
14 works?

15 A. The network marketing side of it?

16 Q. Well, let's do this. Let's say I'm
17 someone who's interested in hearing about RaPower3.
18 What would you tell me?

19 MR. TEAKELL: If you know.

20 A. Usually the first thing I tell them is to
21 check out the RaPower website and talk to them. But
22 if they're interested in the network marketing side,
23 I can tell them their commission structure is based
24 on the number of units that are sold on their
25 downline, which is typical of any network marketing

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1 company.

2 BY MS. HEALY GALLAGHER:

3 Q. Okay. And by downline do you mean, you
4 know, if you, for example, bring me in to RaPower3,
5 I'm in your downline?

6 A. Yes.

7 Q. And then anyone that I bring in to
8 RaPower3 would be in my downline --

9 A. Yes.

10 Q. -- and in your downline.

11 A. Yes.

12 Q. Okay. So there are commissions involved
13 in RaPower3. How else can I make money in RaPower3?

14 A. They have a -- the rental agreement that
15 once they have it in production, receive rental
16 income. Then based on the volume of income that is
17 taken in by IAUS, then they will pay out bonuses
18 once that income hits a certain level.

19 Q. Okay. Let's unpack that a little bit.

20 You mentioned rental income and you mentioned a
21 bonus. How does someone earn rental income through
22 RaPower3?

23 A. By each number of units that they -- that
24 they own. Then once they're in production and it
25 hits its targeted production goals, then they earn

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1 rental income.
 2 Q. You've used the word unit a couple of
 3 times. By unit do you mean lens?
 4 A. Well, the lens is part of the unit.
 5 Q. What's the unit?
 6 A. Well, there's different components that go
 7 into the actual -- the actual solar system, and the
 8 lens is just one of the components. There's also
 9 the cabling, the turbines, the structures, the heat
 10 concentrators and everything. These are all part of
 11 the system.
 12 Q. So when I -- when I buy something from
 13 RaPower3, what am I buying?
 14 A. They call it a lens, but you're actually
 15 buying some of the other components too if you will
 16 read the purchase agreement.
 17 Q. Okay. So from your understanding, the
 18 purchase agreement means that a customer is buying
 19 not just a lens but also other things related to the
 20 lens?
 21 A. Yes.
 22 Q. Did you get that understanding from
 23 anything other than the purchase agreement?
 24 A. No.
 25 Q. Okay. So you talked about the units being

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1 in production. What does that mean?
 2 A. Well, Lucite actually makes the actual
 3 lens itself for RaPower3.
 4 Q. Okay. So Lucite produces a lens. Then
 5 what happens?
 6 A. Well, then that's shipped to RaPower3 and
 7 then they actually put the frame on it, the cabling
 8 on it. Their manufacturing plant produces the
 9 various components that are needed to put it up on
 10 the tower. They develop the circuit board, the
 11 axles that rotates it, the concentrator, the
 12 turbine. So this is all part of an entire solar
 13 system.
 14 Q. Okay.
 15 A. And the lens is -- the lens is just one
 16 component. So when they say you're purchasing a
 17 lens, well, you're purchasing one of those lenses.
 18 They don't break down, well, along with the lens
 19 comes 28 feet of cables, four brackets, six frames
 20 or whatever. I mean, so they just call it for
 21 simplicity's sake you're purchasing a lens.
 22 Q. Okay. So you said that once a unit is in
 23 production, then the owner can earn rental income.
 24 What do you mean by in production?
 25 A. Well, okay. The lenses have already been

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1 produced themselves. I mean, you can go to RaPower
 2 to their manufacturing plant and actually -- and see
 3 the lens. Then you can see the cabling, the frames
 4 and everything. And that's where their production
 5 is at is at the RaPower manufacturing in Delta,
 6 Utah.
 7 Q. So when does someone start earning rental
 8 income?
 9 A. Once they're actually put into production
 10 to create electricity. And then they have to hit
 11 target goals based on the contracts before rental
 12 income is paid.
 13 Q. Mr. Howell, you have purchased units from
 14 RaPower3, correct?
 15 A. Yes.
 16 Q. Have you ever been paid any rental income?
 17 A. No.
 18 Q. To your knowledge, has anyone ever been
 19 paid rental income for their units?
 20 A. Not that I recall.
 21 Q. So to your knowledge no one has been paid
 22 rental income?
 23 A. Right, yes.
 24 Q. Mr. Howell, you mentioned bonuses. What's
 25 your understanding of how someone gets a bonus?

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1 A. When they purchase the solar lens, then
 2 each unit they were -- once IAU -- IAUS hit their
 3 targeted income goals, then they would pay out
 4 bonuses based on the number of units that you
 5 purchased.
 6 Q. Have you ever been paid a bonus?
 7 A. No.
 8 Q. To your knowledge has anyone else ever
 9 been paid a bonus?
 10 A. No.
 11 Q. Have you ever asked anyone why you have
 12 not received rental income?
 13 A. No.
 14 Q. Why not?
 15 A. Because I know why.
 16 Q. Why haven't you?
 17 A. Because they're still developing the solar
 18 field, and then they've got to hit their targeted
 19 goals.
 20 Q. You bought into this in 2011, correct?
 21 A. I believe so.
 22 Q. Okay. It's 2017.
 23 A. I understand.
 24 Q. Where's that rental income, sir?
 25 A. Mm-hmm.

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1 Q. Where is it?
 2 A. It's piling up, supposedly.
 3 Q. It's piling up, you say. What do you mean
 4 by that?
 5 A. I don't know where it's at.
 6 Q. What do you mean by --
 7 A. And to --
 8 Q. Hang on. What do you mean by it's piling
 9 up?
 10 A. It's piling up for my grandkids to collect
 11 on. That was just being funny.
 12 Q. So has anyone ever told you that you will
 13 be paid back rent for your units?
 14 A. I don't believe so.
 15 Q. So if you bought in in 2011 and now it's
 16 2017, have you ever complained to anyone that you
 17 haven't received rental income?
 18 A. I imagine I have --
 19 Q. To whom?
 20 A. -- asked Greg Shepard what the problem is,
 21 why they're not in production, and just like
 22 probably lots of other people have probably asked
 23 him the same question.
 24 Q. Have you ever asked anyone other than Greg
 25 Shepard what the problem is?

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1 A. I think I've talked to Neldon one time a
 2 number of years back.
 3 Q. When did you talk to Neldon?
 4 A. 2012, '13. It's been quite awhile back.
 5 Q. What did Mr. Johnson say?
 6 A. That they were having some development
 7 problems with some of the components.
 8 Q. Did that satisfy you?
 9 A. I actually saw the problem. I actually
 10 was in their manufacturing plant in 2014 or '15 and
 11 saw a lot of their heat concentrators that they had
 12 produced but he was having to redesign because in
 13 one of their field tests they didn't take the heat
 14 that they had projected that they would and so he
 15 was having to redesign the concentrator. And they
 16 had a whole warehouse full of them already produced.
 17 Q. I want to make sure I understand. So they
 18 had already produced concentrators in large
 19 quantities?
 20 A. Yes.
 21 Q. And only after that found out that it
 22 didn't work the way they wanted it to?
 23 A. On an -- they had done another heat test,
 24 and apparently the sun's rays were getting hotter
 25 than they had originally designed for.

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1 MS. HEALY GALLAGHER: So I'd like you to
 2 read back the question, please.
 3 THE REPORTER: "Question: I want to make
 4 sure I understand. So they had already produced
 5 concentrators in large quantities?
 6 "Answer: Yes.
 7 "Question: And only after that found out
 8 that it didn't work the way they wanted it to?"
 9 BY MS. HEALY GALLAGHER:
 10 Q. Yes or no?
 11 A. No.
 12 Q. No. Okay. So what happened?
 13 A. They redesigned the concentrator.
 14 Q. Right.
 15 A. Neldon redesigned the concentrator.
 16 Q. And what I want to understand is, did he
 17 redesign the concentrator before or after they had
 18 produced many concentrators that did not work?
 19 A. I believe it was after.
 20 Q. Okay. So he -- they produced a number of
 21 concentrators. Only then did they realize that
 22 style of concentrator did not work?
 23 A. To what I understand, yes.
 24 Q. So then Mr. Johnson had to redesign the
 25 concentrator?

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1 A. Yes.
 2 Q. Did you ever ask him why they wasted the
 3 time to produce all kinds of concentrators that
 4 didn't work?
 5 A. I've been in manufacturing a number of
 6 years, and I have seen designs that supposedly work
 7 and then didn't work and then they had to go back
 8 and redo the design. And so it -- it's -- in the
 9 manufacturing process, yes, it can happen.
 10 Q. To your knowledge, did Mr. Johnson's
 11 redesigned concentrator work?
 12 A. I don't know.
 13 Q. Have you ever asked?
 14 A. No, I haven't.
 15 Q. Why not?
 16 A. I haven't ever talked to him in a number
 17 of years.
 18 Q. Have you asked anyone else whether the new
 19 concentrator works?
 20 A. I don't believe I have.
 21 Q. Why not?
 22 A. I wasn't thinking about that any
 23 particular time.
 24 Q. What I'm trying to understand, Mr. Howell,
 25 if you're supposed to be getting rental income from

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1 a unit that is in operation and it continues to not
2 be in operation, I'd like to know why you are
3 content with these answers.

4 A. It -- the whole process is a complex
5 process that I don't begin to understand all of the
6 development and everything behind it. And Neldon
7 Johnson designs everything. He tests everything.

8 Now, if they had a -- spending millions of
9 dollars on engineering, then you would expect it to
10 be solved within a short period of time. But when
11 you have one person that does everything, they do
12 the design work, they do the testing of each of the
13 components of it to maintain cost levels down, then
14 in that environment it's going to take a lot longer
15 period of time. Then if you hire a bunch of
16 engineers, here's a problem, let's get it fixed,
17 then go. Why -- and that's their decision.

18 Q. It's your money.

19 A. True.

20 Q. So I guess I'm just trying to understand
21 why you believe Neldon Johnson will ever create a
22 system that uses your units to produce you rental
23 income.

24 A. It's not an easy answer to do. Until
25 you've been there and seen it and you know --

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1 Q. I've seen it, Mr. Howell.

2 A. -- the manufacturing process, what -- what
3 problems can arise. If they had -- a typical
4 example, take Solyndra. Everybody knows Solyndra.

5 Q. I'm not interested in Solyndra.
6 Mr. Howell, I've been there. I've seen it. I want
7 to know why you have any belief that Neldon Johnson
8 is going to produce any system that's going to use a
9 unit that you bought to generate you rental income.

10 A. I believe that they are putting in the
11 solar field now, getting it completed to go into
12 production.

13 Q. You've just said earlier today that you've
14 only heard of this system working.

15 A. True.

16 Q. Even a little bit. So why do you believe
17 that they have any business creating a solar field
18 of systems that you don't even know work?

19 A. You have to sometimes have some belief in
20 people and that what they're doing is going to work.

21 Q. What I'm asking, Mr. Howell, is why you
22 have that belief in Neldon Johnson when you've just
23 admitted that you did no research into his
24 background with solar energy technology --

25 A. That is not --

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1 Q. -- except he has a patent and he has a
2 white paper that you did not understand.

3 So why do you have that belief in Neldon
4 Johnson? If the answer's I don't know, you can say
5 I don't know.

6 A. Well, it's hard to -- to -- to really
7 explain a belief in a person that you look at what
8 they are doing and try to put yourself in their
9 shoes and on their developing of this technology,
10 putting in the solar field that they are doing. And
11 so at some point you just have to -- to trust that
12 they know what they're doing.

13 Q. No, the other option is you don't buy in.
14 That's the other option. You don't have to trust,
15 Mr. Howell.

16 A. That's true.

17 Q. So I want to know -- you said it's hard to
18 explain your belief. I'd like you to try.

19 A. Just really can't explain it.

20 Q. When did you start complaining to Greg
21 Shepard that your units were not generating rental
22 income?

23 A. Probably off and on various times. I
24 don't recall any really specific times or anything.
25 Might have a conversation and ask him what the

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1 progress was on the manufacturing and how things
2 were going, but I don't know if any -- and he really
3 says it's Neldon would be the one to talk to because
4 he has actually -- does the design work. He does
5 the -- Greg does the -- runs the day-to-day
6 operation, but it's up to Neldon to make sure that
7 all of the developments are done and everything.
8 And --

9 Q. About how many times would you say you've
10 complained to Greg Shepard that you're not earning
11 any rental income?

12 A. Hard to say.

13 Q. More than ten?

14 A. Possibly.

15 Q. More than 20?

16 A. I don't know. I'm not sure of.

17 Q. And he refers you to Neldon Johnson when
18 you complain about that?

19 A. Well, he usually explains what stage that
20 they are in in their development of the solar field
21 or in the development of their -- of the circuit
22 boards or the different components in case there had
23 been a delay or something.

24 Q. Do you know where he gets his information?

25 A. Not -- not really, because I'm not there.

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1 I'm not on day-to-day conversations with him.
 2 Q. Have you ever complained to anyone that
 3 you've never gotten a bonus?
 4 A. No.
 5 Q. Why not?
 6 A. Because of what the contract reads.
 7 Q. What do you mean by that?
 8 A. The contract reads that IAUS has to take
 9 in so much income before their bonuses will be paid.
 10 And so until they do that, there's no need
 11 complaining.
 12 Q. How do you know how much income IAUS has
 13 taken in?
 14 A. They have to file their SEC reports.
 15 Q. Do you track their income via the SEC
 16 reports?
 17 A. I haven't in the last few years.
 18 Q. Mr. Howell, it's your understanding,
 19 correct, that there are certain federal income tax
 20 benefits of buying units through RaPower3?
 21 A. Yes.
 22 Q. What are those?
 23 A. The energy credit and the depreciation.
 24 Q. You've mentioned a couple of times that
 25 you have visited the manufacturing plant or the site

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1 where towers are. Do you remember that?
 2 A. I have visited manufacturing plant twice.
 3 Q. Manufacturing plant twice. Okay. We'll
 4 just start with this. How many times have you been
 5 to Utah?
 6 A. In the last few years, twice.
 7 Q. What do you mean the last few years?
 8 A. Well, I had -- my daughter lived in
 9 Washington state, and so we could -- we could either
 10 travel up through Utah area or go through up through
 11 California and visit relatives on the way to
 12 Washington state.
 13 Q. So we'll -- I'll keep my questions with
 14 respect to visits to Utah with some connection to
 15 RaPower3. So since 2010 how many visits have you
 16 made to Utah in connection with RaPower3?
 17 A. Two.
 18 Q. Two. When were those?
 19 A. 2012 and I believe 2015, '14 or '15. I'm
 20 not sure exactly which year.
 21 Q. All right. For the 2012 visit what did
 22 you do?
 23 A. That's when they had a convention.
 24 Q. What did the convention involve?
 25 A. We actually toured the manufacturing plant

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1 and we had a convention meeting where Greg Shepard
 2 talked, Neldon Johnson talked. And then they had a
 3 CPA there from Utah that talked too.
 4 Q. During your visit in 2012, did you
 5 actually see towers with lenses installed?
 6 A. We did the -- went to their research and
 7 development site.
 8 Q. The meeting, was that in Salt Lake City?
 9 A. I believe it was, at the library at the
 10 beginning. It was two places we went to. Trying to
 11 remember where they were. Know one was at a
 12 library. Another one was at a -- I don't -- might
 13 have been the same area.
 14 Q. You said that Greg Shepard talked at the
 15 meeting. Do you remember what he talked about?
 16 A. Just about RaPower. I don't really
 17 remember all of the specifics or anything.
 18 Q. Do you remember what Neldon Johnson talked
 19 about?
 20 A. Basically the technology and the
 21 development of the technology.
 22 Q. Do you remember what the CPA talked about?
 23 A. He was talking about the tax benefits and
 24 the tax law, the energy credits, the depreciation.
 25 Q. And you said you toured the manufacturing

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1 plant in 2012?
 2 A. Yes.
 3 Q. And you toured the R&D site in 2012?
 4 A. Yes.
 5 Q. On the R&D site, that's where there are
 6 approximately 15 or 17 towers erected, correct?
 7 A. Somewhere in that neighborhood.
 8 Q. Right. Did you go anywhere else in 2012?
 9 A. No. Yeah, I take that back. Yes, we went
 10 to Neldon's house.
 11 Q. Why did you go to Neldon's house?
 12 A. We just went by there. No particular
 13 reason that I know of. That's just where the whole
 14 group of us went.
 15 Q. Do you remember seeing government
 16 officials --
 17 A. Yes.
 18 Q. -- with large weapons --
 19 A. Yes.
 20 Q. -- on that 2012 visit?
 21 A. Yes.
 22 Q. Do you know what that was about?
 23 A. They were doing a raid.
 24 Q. On?
 25 A. RaPower, Neldon Johnson, confiscating

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1 computers and everything. Yes.
 2 Q. Did you ask anybody about that?
 3 A. We did. We talked about it some.
 4 Q. Who did you talk about it with?
 5 A. Greg, Neldon. They were -- we were at
 6 a -- we had stopped somewhere to -- they cooked
 7 hamburgers and stuff, and so --
 8 Q. What did Neldon Johnson say about the
 9 raid?
 10 A. I don't really recall all of that. We
 11 weren't given any specifics.
 12 Q. You mean specifics?
 13 A. I didn't look at any search warrants or
 14 anything like that, so I didn't have the specifics.
 15 Q. What did Greg Shepard say, if anything?
 16 A. That's been awhile back. I'm not sure of
 17 any exact things that they said.
 18 Q. Do you remember generally?
 19 A. Just said that the government raided
 20 Neldon's house and the manufacturing plant, because
 21 we had to go to the solar research and development
 22 first before we could come back to the manufacturing
 23 plant.
 24 Q. Did you ever come to learn that it was the
 25 criminal side of the IRS that was involved in that

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1 raid?
 2 A. Yes.
 3 Q. When did you learn that?
 4 A. I saw a -- I saw something online about
 5 it. Don't remember all the details. It was a -- it
 6 was from a -- there was a report made on it and then
 7 they had -- it talked about it. Don't remember all
 8 the details of it.
 9 Q. Was that -- do you think that was in 2012
 10 that you learned that?
 11 A. I thought it was probably 2013 or so.
 12 Q. Did you ask anyone why the criminal side
 13 of the IRS was conducting a raid at Neldon Johnson's
 14 house and RaPower3 facilities?
 15 A. Said they were taking computers and --
 16 Q. No, no, no, sir. I asked why. Did you
 17 ask anyone why the criminal side of the IRS was
 18 conducting a raid?
 19 A. Probably brought it up in conversation
 20 sometime later with Greg and that -- and why they
 21 were doing this is they were looking for information
 22 to support a Ponzi scheme or something like that.
 23 Q. Did that raise any concerns for you as an
 24 enrolled agent that CI was conducting a raid?
 25 A. Yes, it does create, you know, why -- why

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1 this particular time they chose to do it during the
 2 convention, first off, why didn't --
 3 Q. No, no, I'm not concerned about during --
 4 A. And --
 5 Q. No, sir, hang on. I'm not concerned about
 6 during the convention. I'm asking you, did it raise
 7 concerns for you as an enrolled agent that CI
 8 conducted a raid of this company that you're
 9 involved in?
 10 A. There was some concern there.
 11 Q. What was your concern?
 12 A. Was, okay, if -- if they've done something
 13 wrong, are they going to shut them down; and, if so,
 14 when.
 15 Q. Did you express that concern to Greg
 16 Shepard?
 17 A. I'm sure we -- it was mentioned or
 18 something.
 19 Q. But you were content, sir, as an enrolled
 20 agent to continue doing business with RaPower3 after
 21 CI got involved?
 22 A. To a limited -- at that time we did a
 23 limited -- we didn't do a lot of business with
 24 that -- with RaPower in probably -- not sure. The
 25 next year or the following year, we weren't really

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1 doing that much with them.
 2 I remember having a conversation I think
 3 with Greg -- I'm not sure what year it was -- if
 4 they ever heard of the outcome from that
 5 investigation, if they were being shut down or what
 6 was going on.
 7 Q. After you knew that CI had raided
 8 RaPower3, when you say you scaled back on the
 9 business you did with RaPower3, do you mean you
 10 bought fewer lenses or you prepared fewer tax
 11 returns involving RaPower3 or both?
 12 A. Probably both.
 13 Q. Why didn't you stop entirely?
 14 A. Let's see.
 15 Q. It's a long pause, Mr. Howell.
 16 A. Yeah, I'm trying to -- to try to think
 17 back to that -- that time frame and think what was
 18 going on then. I don't really recall any
 19 particulars on what we did in that 2013 reflecting
 20 for 2012 tax year.
 21 Q. No, that's not what I'm asking, sir. Why
 22 didn't you stop entirely?
 23 A. Not really sure why. It's -- I wasn't --
 24 I wasn't positive that -- even when that the
 25 outcome, if they were going to shut them down, then

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| <p style="text-align: right;">Page 85</p> <p>1 there would be -- it would have been done rapidly 2 and then the program would have been shut off. 3 If -- and when we -- I talked with, I 4 believe, Greg probably if they had had any notices 5 to -- to stop selling of the lenses or remove their 6 website or if the government said that they could no 7 longer do the program. 8 Q. What did he say? 9 A. That from the information he had, they 10 were still in business. Their manufacturing process 11 was still going on. Neldon was still doing his 12 development of the different parts of it. That's to 13 the best of my recollection. 14 MS. HEALY GALLAGHER: Off the record, 15 please. 16 (Off record from 11:31 to 11:32) 17 MS. HEALY GALLAGHER: Back on, please. 18 BY MS. HEALY GALLAGHER: 19 Q. Mr. Howell, I'm showing you what's been 20 previously marked Plaintiff's Exhibit 396. Would 21 you take a look through that and let me know when 22 you are finished. 23 Are you ready to answer questions about 24 Plaintiff's Exhibit 396? 25 A. Yes.</p> | <p style="text-align: right;">Page 87</p> <p>1 tough question to the meeting. As a group, we will 2 get everyone's input and give the answer as best we 3 can." Did I read that correctly? 4 A. Yes. 5 Q. More or less? Now, next to that, the 6 handwriting says, "How do we know RaPower is not a 7 scam, us and government?" Do you see that, sir? 8 A. Yes. 9 Q. Do you remember Mr. Aulds asking this 10 question in that meeting? 11 A. I don't recall it specifically. 12 Q. Do you recall the conversation about that 13 generally? 14 A. I'm sure he asked it if he wrote down that 15 he did. 16 Q. Did you ever have conversations with 17 Mr. Aulds about whether RaPower3 was a scam? 18 A. Yes, we have had some conversations. 19 Q. When did you have those conversations? 20 A. Don't recall any specific times. 21 Q. Was it closer to 2012 or closer to present 22 day? 23 A. It could be closer to present day. 24 Q. What have you told Mr. Aulds about whether 25 RaPower3 is a scam?</p> |
| <p style="text-align: right;">Page 86</p> <p>1 Q. Do you recognize the exhibit? 2 A. Yes. 3 Q. What is it? 4 A. Was a convention outline. 5 Q. This is for the -- 6 A. In 2012. 7 Q. Yes. So this is for the 2012 RaPower3 8 convention, correct? 9 A. Yes. 10 Q. And I'll represent to you that Robert 11 Aulds produced this document. The Bates numbers for 12 these documents are Aulds_R&M 74 through 94. And 13 you know Mr. Aulds. 14 A. Yes. 15 Q. Yes, Mr. Howell. He's one of your 16 customers. 17 A. Yes. 18 Q. So during his deposition Mr. Aulds talked 19 about page that's numbered 77. Mr. Aulds recalled 20 talking in a meeting where he said you were present 21 about answering the toughest questions. Do you see 22 that heading, "Answering the Toughest Questions," at 23 the top of the page? 24 A. Uh-huh. Yes. 25 Q. Yes? All right. It says, "Bring one</p> | <p style="text-align: right;">Page 88</p> <p>1 A. That I don't know if it is a scam. I 2 mean, it -- they are a manufacturing, they have 3 their manufacturing facility, they have employees, 4 they have permits. And in typical scam environments 5 they don't go through a lot of the effort to put in 6 the money, resources to develop a actual 7 manufacturing plant, to purchase properties and have 8 employees to the extent that they do. 9 Q. But you don't know if it's a scam? 10 A. I don't think anybody knows if it is a 11 scam right now. I mean, it's -- some people say it 12 is, some people say it isn't. You know, there's 13 pros and cons to both of it. 14 As long as they're in operation and they 15 are working on putting in their solar field to 16 produce electricity, heat or cool buildings, purify 17 water, you can't really say it is a scam based on 18 their ongoing effort. 19 Q. What, Mr. Howell, are some of the 20 indications that it is a scam? 21 A. I don't know if you could say it is. 22 Q. What are some of the indications that 23 RaPower3 is a scam? 24 MR. PAUL: I think I'm going to assert an 25 objection at this point. I think the question</p> |

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| <p style="text-align: right;">Page 89</p> <p>1 itself is argumentative and lacks foundation. 2 BY MS. HEALY GALLAGHER: 3 Q. Go ahead and answer. 4 A. I'm not sure what you're trying to ask 5 on -- I don't see where you're trying to ask if 6 they're a scam. Under what context are you trying 7 to say that they are any scam? 8 Q. Mr. Howell, you just said that you had 9 conversations with Mr. Aulds about whether -- 10 A. He -- 11 Q. -- excuse me -- RaPower3 is a scam. I 12 asked you what you told him. You said you didn't 13 know whether it was a scam but there are pros and 14 cons to both perspectives. 15 I want to know what you think the 16 indicators are that RaPower3 is a scam. 17 A. I don't really think they are a scam in 18 the context that you think of scams. 19 Q. Sir, I'm using your words and Mr. Aulds'. 20 MR. TEAKELL: Just let him go ahead and 21 finish the question, or the answer. 22 BY MS. HEALY GALLAGHER: 23 Q. I'm using your words and Mr. Aulds' words. 24 So I'm asking you to tell me what -- how can you say 25 I don't know if it is?</p> | <p style="text-align: right;">Page 91</p> <p>1 refer back to your contracts. The contracts do 2 specify at what period of time they will pay the 3 rental, what period of time they will pay the bonus. 4 And until that particular time, you can't really say 5 they're a scam. 6 Q. Mr. Howell, as an enrolled agent, does it 7 concern you at all that no one's earned rental 8 income yet? 9 A. There's a -- a frustration on -- on 10 everybody's that -- and not everybody looks at that. 11 I tell them read what the contract says. Your 12 contracts specify they have to produce so much 13 energy before the rental is paid. The contracts 14 also say they have to receive so much income before 15 the bonuses are paid. 16 And so they've got a contract that both 17 parties acknowledge. So until they hit that 18 contract or they choose to shut down, totally go out 19 of business, nobody's there, they're still not in 20 violation of the contracts. 21 MS. HEALY GALLAGHER: Would you read back 22 the question, please. 23 Object to the responsiveness of the 24 answer. 25 THE REPORTER: "Question: Mr. Howell, as</p> |
| <p style="text-align: right;">Page 90</p> <p>1 A. I'll tell you what I told Bob. I said, 2 typically if it's -- if they were going to scam us, 3 why are they still in business? Why are they trying 4 to develop their solar field? I mean, if they were 5 going to scam us, why didn't they shut their doors, 6 take their money and run? They are still a 7 business. They are still paying employees. They 8 are still paying property taxes. They are still 9 working on this. 10 So for somebody to say it's a scam, then I 11 said, okay -- because that's what Bob says, well, 12 are we being scammed. I said as long as they are in 13 business, that they are building their solar field 14 and until they get it complete, and then if it 15 doesn't work, they fold up their doors and they 16 skedooddle, then at that point possibility we were 17 scammed. 18 But they do not show the typical what you 19 would say is a scam business because they are still 20 doing a payroll, they're still producing parts, they 21 still have a project going on, and how -- and so for 22 this to be a scam, I don't see -- yeah, there's 23 questions that arise saying, well, is it a scam 24 because we haven't seen the rental income or we 25 haven't seen the bonus income. Then you got to</p> | <p style="text-align: right;">Page 92</p> <p>1 an enrolled agent, does it concern you at all that 2 no one's earned rental income yet?" 3 A. No, because they haven't hit the contract 4 goals. 5 BY MS. HEALY GALLAGHER: 6 Q. What if they never do? 7 MR. TEAKELL: Can we go off the record for 8 a sec? 9 MS. HEALY GALLAGHER: I'd like an answer 10 to the question first. 11 MR. TEAKELL: I'd like to go off the 12 record. 13 MS. HEALY GALLAGHER: We're staying on. 14 Answer the question. 15 MR. TEAKELL: Okay. I'll put my objection 16 in for the record. He's asked and answered. 17 MR. PAUL: I also -- go ahead. 18 A. We can't foresee the future. And so -- 19 and so if -- I don't know if they're going to shut 20 their doors. So there's -- you -- there's not a 21 definite answer to it. 22 BY MS. HEALY GALLAGHER: 23 Q. But you're content to continue to prepare 24 tax returns? 25 MR. TEAKELL: Let's go off the record for</p> |

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| <p style="text-align: right;">Page 93</p> <p>1 a bit.</p> <p>2 MS. HEALY GALLAGHER: Excuse me.</p> <p>3 MR. TEAKELL: No, let's go off the record.</p> <p>4 MS. HEALY GALLAGHER: No, sir. This is my</p> <p>5 deposition. We're staying on.</p> <p>6 MR. TEAKELL: I'm going to go off the</p> <p>7 record, or I'll just go ahead and put it on the</p> <p>8 record here then.</p> <p>9 MS. HEALY GALLAGHER: If you feel like you</p> <p>10 need to make a record, please do so.</p> <p>11 MR. TEAKELL: Where are you going with</p> <p>12 this as to what -- first of all, he's answered the</p> <p>13 question several different ways.</p> <p>14 MS. HEALY GALLAGHER: Sir, that's a</p> <p>15 completely inappropriate speaking objection.</p> <p>16 MR. TEAKELL: Secondly, where are we going</p> <p>17 with this? Do we want to go off the record?</p> <p>18 MS. HEALY GALLAGHER: No.</p> <p>19 MR. TEAKELL: Where are we going with this</p> <p>20 as to whether or not he thinks it's a scam or not?</p> <p>21 What relevance is it going forward? And perhaps</p> <p>22 I've given you a lot of leeway with this, but what</p> <p>23 relevance is this with where you're going with your</p> <p>24 questions --</p> <p>25 MS. HEALY GALLAGHER: Number one --</p> | <p style="text-align: right;">Page 95</p> <p>1 testimony.</p> <p>2 BY MS. HEALY GALLAGHER:</p> <p>3 Q. And you have prepared hundreds of tax</p> <p>4 returns claiming tax benefits related to RaPower3.</p> <p>5 A. Yes.</p> <p>6 Q. Yes? And it sounds like you'll continue</p> <p>7 to do that. Correct?</p> <p>8 A. Until it can be shown in tax court that</p> <p>9 this is not a viable business.</p> <p>10 Q. "This" being RaPower3?</p> <p>11 A. RaPower3.</p> <p>12 Q. So what, if any, concern do you have about</p> <p>13 this litigation, this injunction suit against</p> <p>14 RaPower3 and other defendants?</p> <p>15 MR. PAUL: I'm going to object to the</p> <p>16 foundation, argumentative.</p> <p>17 MR. TEAKELL: It's too broad of a</p> <p>18 question.</p> <p>19 A. Be more specific.</p> <p>20 BY MS. HEALY GALLAGHER:</p> <p>21 Q. We'll start with this. When did you first</p> <p>22 hear about this litigation?</p> <p>23 A. Probably when I received a summons.</p> <p>24 Q. Was that for the production of documents?</p> <p>25 A. No, it was for this particular one. The</p> |
| <p style="text-align: right;">Page 94</p> <p>1 MR. TEAKELL: -- whether he thinks it's a</p> <p>2 scam or not?</p> <p>3 MS. HEALY GALLAGHER: -- that is a</p> <p>4 completely inappropriate speaking objection. Number</p> <p>5 two --</p> <p>6 MR. TEAKELL: Well, we're on the record</p> <p>7 because you don't want to go off the record.</p> <p>8 MS. HEALY GALLAGHER: -- relevance is</p> <p>9 broadly construed. Mr. Howell has prepared hundreds</p> <p>10 of returns claiming tax benefits with respect to</p> <p>11 RaPower3. So I'm going to get my answer. Thank you</p> <p>12 for your objection.</p> <p>13 Please read back my question.</p> <p>14 THE REPORTER: "Question: But you're</p> <p>15 content to continue to prepare tax returns?"</p> <p>16 A. Yes.</p> <p>17 MR. PAUL: I'm going to object. I want to</p> <p>18 assert an objection as to it's been asked and</p> <p>19 answered, it's argumentative, and foundation.</p> <p>20 MR. TEAKELL: Yeah, same objections.</p> <p>21 BY MS. HEALY GALLAGHER:</p> <p>22 Q. Mr. Howell, you've just said you're not</p> <p>23 sure whether RaPower3 is a scam or not.</p> <p>24 MR. PAUL: I'm going to object to that too</p> <p>25 because that completely misstates the prior</p> | <p style="text-align: right;">Page 96</p> <p>1 actual production of documents was from IRS wanting</p> <p>2 copies of tax returns. This particular one, to the</p> <p>3 best of my knowledge, was when I received a summons</p> <p>4 to do a deposition.</p> <p>5 Q. Well, I'll ask you this. Are you aware,</p> <p>6 Mr. Howell, that the United States has sued RaPower3</p> <p>7 and other defendants in fact seeking to shut down</p> <p>8 what the United States alleges is an abusive tax</p> <p>9 scheme?</p> <p>10 A. What I thought this was.</p> <p>11 Q. So you are aware of that litigation?</p> <p>12 A. Alleged.</p> <p>13 Q. You're aware of the litigation?</p> <p>14 A. Yes.</p> <p>15 Q. Yes. And you are aware that the</p> <p>16 United States alleges that RaPower3 is involved in</p> <p>17 an abusive tax scheme, correct?</p> <p>18 A. Alleges, yes.</p> <p>19 Q. You understand that is the allegation,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So as an enrolled agent, are you</p> <p>23 concerned in any way about this litigation --</p> <p>24 MR. TEAKELL: Same objection as before.</p> <p>25 BY MS. HEALY GALLAGHER:</p> |

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1 Q. -- and what it means for whether RaPower3
2 is involved in a tax scheme?
3 A. No.
4 Q. Why not?
5 A. I've answered that before. They are still
6 an ongoing enterprise. Their -- they have had --
7 the IRS has audited many tax returns, and they have
8 yet to have a single one go through tax court where
9 it would deem that, look, this is not a viable
10 business. They are still working. They're still
11 manufacturing parts. They're still developing their
12 solar field.
13 So if it is a -- a scheme of some sort,
14 nobody has produced any concrete facts to support
15 that. It looks like there's a fishing net out there
16 trying to find facts to support that. I've been in
17 audits with auditors that agreed with it, then I've
18 been in audits with auditors that did not agree with
19 it. And I've been with appeals officers that saw
20 the substance of it and that there could be
21 substance there and then others that did not.
22 So until there is a tax court case that
23 definitely goes one way or the other, then that will
24 be appealed, and until that goes -- I've read tax
25 court cases on other types of schemes or such that,

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1 yes, it was cut and dried, they salted the mines
2 before they sold them as these tax benefits, or this
3 where they were more cut and dried. This is still
4 an ongoing business entity. And so for somebody to
5 say it is a scam or it's a Ponzi scheme or it is a
6 pyramid, they have yet to prove it.
7 Q. So it sounds like, Mr. Howell, until a
8 court definitively rules that the RaPower3 program
9 is unlawful, you will continue to prepare tax
10 returns with RaPower3 tax benefits on them.
11 A. Probably. Because right now there's --
12 the tax law's there. There's been other court cases
13 with similar technologies that have went in their
14 favor. There's been tax court cases that were
15 opposite. And so this is a complex issue that, you
16 know, if you want to go back to look at it is a
17 scam, then there's a lot of other industries you
18 could look at and say that they were scams.
19 But it's never -- there's no place, no
20 court has said, hey, this is, this isn't. The tax
21 law says, hey, you purchase solar equipment, you're
22 entitled to these solar energy credits. When you
23 take the depreciation, you have to reduce the
24 depreciation by half of the solar energy credit to
25 get your basis for your depreciation. And so it's

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1 not cut and dry.
2 If I thought that, okay, I can foresee
3 RaPower is going to shut down in 2018, hey, look,
4 we've got to stop doing this, they're going out of
5 business, and so we're not going to have any basis
6 to do any of this. But we don't know what the
7 future's going to hold. They might develop their --
8 get their solar field up and running and produce
9 electricity and tie it into the grid. And then
10 where is all of these court cases going? I don't
11 see the future. Who can?
12 Now, if I thought that this was a scam
13 against the government, yes, I would tell them they
14 couldn't take it. Somebody says they -- they got a
15 racehorse and they have a business of racehorses,
16 I'm going to tell them, no, they don't, because of
17 the -- the tax court cases that there's been on
18 racehorses per se and how they have to be set up and
19 everything. Very few people can actually show that
20 as a business.
21 And the same with farming, same with any
22 business. You can say you have a farm, but until
23 your intent is to make money with that farm, and you
24 can take losses forever, in theory, but at some
25 point in time you've got to show your intent is to

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1 make money, how are you going to make money, where
2 is your revenue going to be generated from. And it
3 doesn't say revenue has to be this year or this year
4 or this year or this year or this year. There is no
5 specific in the tax law that says you must produce
6 this amount of income to be a viable business or at
7 this certain period of time. What is your intent?
8 Is the intent there to make it a viable business?
9 There's people that -- clients that do
10 RaPower that get commission checks that pay taxes on
11 their commission checks, so they are paying taxes on
12 the network marketing side of their business. And
13 so not -- and some people have purchased them just
14 for the future revenue of rental. I have a client
15 that purchased a number of units. He doesn't need
16 them for tax purposes. He was looking at the future
17 for rental. He was just changing his will to make
18 sure his kids could inherit that for future income.
19 So not everybody does RaPower is for the tax
20 benefits. Network marketing people want to get it
21 because of the income side of it. Other people look
22 at the rental income, the bonus income.
23 So it's -- so, yes, I will do tax returns
24 until somebody says, hey, this is totally illegal,
25 it's against this, you're defrauding the government

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|---|---|
| <p style="text-align: right;">Page 101</p> <p>1 and everything, because the tax law's there. We 2 cannot dispute the tax law. 3 Q. Mr. Howell, you testified earlier that you 4 don't understand the technology underlying the very 5 reason you think someday you're going to get rental 6 income. Isn't that right? 7 A. That is very true. I don't understand -- 8 I don't understand how a computer operates, but I 9 use it. 10 Q. Have you ever used one of your lenses to 11 generate electricity? 12 A. They haven't finished in their production 13 side yet. 14 Q. That's right. So, Mr. Howell, if you 15 don't understand the technology, how do you have any 16 way of predicting any rental income coming to you? 17 MR. PAUL: Objection. Argumentative. 18 A. We can -- 19 BY MS. HEALY GALLAGHER: 20 Q. If the answer is you don't, just say you 21 don't. 22 A. I expect to receive rental income. 23 Q. Why? 24 A. Because I believe that what they are 25 doing, they're getting closer each and every day to</p> | <p style="text-align: right;">Page 103</p> <p>1 somewhere else. So I just toured the manufacturing 2 plant. Talked to some of the workers. 3 Q. This was just a self-guided tour? 4 A. Yes. 5 Q. You mentioned the development field. Is 6 that the field that's in the back of the house? 7 A. I don't know where it's located. I 8 haven't been there, so I cannot say where it's at. 9 Q. Oh, okay. 10 A. I've been to the research and development, 11 not the production area where they're actually 12 putting up the towers and everything. I have never 13 been there. 14 Q. So did you go anywhere other than the 15 manufacturing plant on your visit in 2014 or 2015? 16 A. No. 17 Q. Did you go by the research and development 18 site? 19 A. I probably drove by there. 20 Q. Did you stop? 21 A. No. 22 Q. What, if any, differences did you notice 23 between your visit in 2012 and your visit in 2014 or 24 2015? 25 A. They'd upgraded the manufacturing</p> |
| <p style="text-align: right;">Page 102</p> <p>1 getting their solar field in production. 2 Q. Why do you believe that? 3 A. By the progress that they're making. 4 Q. Who's telling you about the progress? 5 A. Greg Shepard does, and then -- and then 6 people that have been on their tours that have given 7 information back to other people on what they saw. 8 Q. Are any of those people solar energy 9 technology engineers? 10 A. I don't know. I don't know them all. 11 Q. Let's talk about your visit in 2014 or 12 2015. What did you do on that visit? 13 A. I just toured the manufacturing plant. It 14 was -- wasn't on any of their scheduled tours or 15 anything. So I was just going through Utah on my 16 way to Washington state, said I'll just drop by and 17 see if I can get a tour of their development field. 18 But the manager wasn't there when I got there. 19 I wasn't on a scheduled time. I didn't 20 tell them I was going to be there, that when I got 21 into town I called up Greg Shepard and said, hey, 22 look, I'm going to go out to the manufacturing 23 plant, is anybody there that can meet me and show me 24 around. And the manager or the person that was in 25 charge had already -- had already left to go to</p> | <p style="text-align: right;">Page 104</p> <p>1 facility. They'd blown in insulation into it. They 2 had -- they had rooms that had a number of 3 components in them that they had finished 4 manufacturing, and they had done quite a bit of work 5 to the manufacturing since 2012. 6 (Exhibit 586 marked) 7 Q. Handing you, Mr. Howell, what's been 8 marked as Plaintiff's Exhibit 586. Take a look at 9 these, please. For the record, the Bates number for 10 Plaintiff's Exhibit 586 is Howell_John 2450 through 11 2458. 12 Do you recognize Plaintiff's Exhibit 586, 13 Mr. Howell? 14 A. Yes. 15 Q. What are they or what is it? 16 A. Some pictures that RaPower had put out on 17 their development. 18 Q. Okay. So you did not take these pictures? 19 A. Nope, did not. 20 Q. Do you remember when you got these from 21 RaPower3? 22 A. It's been awhile back. No, I do not 23 recall. 24 Q. Do you know how you got them from 25 RaPower3?</p> |

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|---|--|
| <p style="text-align: right;">Page 105</p> <p>1 A. I might have got them through an e-mail or 2 off of their website. 3 Q. Do these photos look like what you saw in 4 2012? 5 A. No. These are different. 6 Q. If you can give me a general idea, what's 7 different about them? 8 A. This might have come from the research and 9 development site. I'm not sure where these were 10 taken. Not sure if I've been to this particular -- 11 particular area. This could have come from their 12 research and development site that shows some towers 13 without lenses in them or some missing lenses. 14 Q. I'm sorry. You're pointing to which page? 15 A. The 2454. 16 Q. Okay. 17 A. But I'm not positive it is, whether any of 18 these are from their research and development site. 19 Q. Okay. You can put that aside. Okay. You 20 mentioned that there were auditors for the IRS who 21 agreed with the tax treatment that was on someone's 22 tax return. Do you know who those auditors were? 23 A. I don't recall their names. I've dealt 24 with dozens of auditors. 25 Q. Do you remember for the taxpayers which</p> | <p style="text-align: right;">Page 107</p> <p>1 Q. Well, that's not what I meant. 2 A. No specific one that I know of. 3 Q. So to your recollection, if a customer's 4 RaPower3 tax treatment has been disallowed by the 5 IRS, has the IRS ever reversed that decision and 6 allowed the tax treatment? 7 A. Not that I'm aware of. But they were all 8 told that it was to be denied whether the auditor 9 agreed with it or not. 10 Q. And, Mr. Howell, as an enrolled agent, 11 does that raise any concern for you about the 12 validity of the tax treatment of RaPower3 on your 13 customers' tax returns? 14 A. No. 15 Q. Why not? 16 A. Because there's been too many court cases 17 where IRS was overturned where they deemed something 18 as not correct or not per the tax law and the courts 19 have actually overturned that and said, yes, we 20 agree with the -- with the individual and not the 21 service. 22 And, now, if IRS had 100 percent record 23 that anytime they said something was wrong the 24 courts upheld it, then, yes, there would be cause 25 for a concern. But tax law is too complex, too</p> |
| <p style="text-align: right;">Page 106</p> <p>1 taxpayer's name it was? 2 A. I've done audits for 70, 80 taxpayers. I 3 don't recall them all. 4 Q. Do you recall which appeals officers 5 agreed with the tax treatment for RaPower3? 6 A. I've talked with appeals officers from 7 different offices. I don't keep track of all their 8 names or anything. 9 Q. So you don't know? 10 A. I'm not sure who they were. I'd just have 11 to go back to my records to see if I could find 12 them. 13 Q. Do you remember which taxpayers were 14 involved with these appeals officers who may have 15 agreed with the tax treatment for RaPower3? 16 A. No, because the -- even if the appeals 17 officer agreed with it, they were told by 18 Washington, D.C., that they must reject them all, 19 whether they agreed with it or not. 20 Q. So have you ever represented a taxpayer 21 whose RaPower3 tax treatment has been allowed by the 22 IRS? 23 A. I'd just have to check because they were 24 probably audited for something else and not the 25 RaPower3 and so it went through.</p> | <p style="text-align: right;">Page 108</p> <p>1 broad, and a lot of it's not precise in language. 2 Q. Have you ever heard of a company called 3 LTB1, LLC? 4 A. I vaguely recall LTB1 on something. I'm 5 not sure where it was at or anything. 6 Q. Do you have any context for it at all? 7 A. It was a -- I think it was a program that 8 they were developing, RaPower3 was developing. 9 That's -- I don't recall any details of it or 10 anything. I just remember seeing the name on 11 something. 12 Q. Have you ever heard of an entity called 13 LTB O&M? 14 A. No. 15 MS. HEALY GALLAGHER: Go off the record, 16 please. 17 (Recess from 12:13 to 1:25) 18 MS. HEALY GALLAGHER: Back on the record, 19 please. 20 BY MS. HEALY GALLAGHER: 21 Q. Mr. Howell, we are back on the record 22 after a lunch break. Did you talk with anybody 23 about the facts of this case during your lunch 24 break? 25 A. No.</p> |

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1 Q. Are there any answers that you would like
 2 to amplify or change at this time?
 3 A. No.
 4 Q. Going back to something we talked about a
 5 little bit earlier. Have you ever used the e-mail
 6 address jhowell@howelltax.com?
 7 A. That was an old one. We haven't used that
 8 in -- I don't remember how long ago that one was
 9 used. Very, very seldom was that ever used. Never
 10 sent anything through that one. It's just people
 11 would mail -- it was on our website at one time.
 12 Now that's all been changed.
 13 Q. Okay. But at one time jhowell --
 14 A. Yeah.
 15 Q. Sorry. Let me finish the question. At
 16 least for a little while, jhowell@howelltax.com was
 17 an e-mail address that you used?
 18 A. Yes. Apparently there was two jhowells at
 19 howelltax.com, some other Howell Tax Service up
 20 north somewhere, and so our e-mails were -- so
 21 forget it. I'd get theirs, they'd get mine, and I
 22 dropped mine.
 23 Q. Sounds reasonable. The phone number for
 24 Howell Tax Service, what is that?
 25 A. (940) 766-0981.

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1 Q. And the street address for Howell Tax
 2 Service?
 3 A. 4708 Kmart Drive, Suite B, Wichita Falls,
 4 Texas.
 5 (Exhibit 587 marked)
 6 Q. Mr. Howell, you've been handed Plaintiff's
 7 Exhibit 587. Please take a look through this and
 8 let me know when you're done.
 9 For the record, while you look, the Bates
 10 numbers are Howell_John 2710 through 2742.
 11 Mr. Howell, do you recognize the pages of
 12 Plaintiff's Exhibit 587?
 13 A. Yes.
 14 Q. These are documents that you produced to
 15 the United States?
 16 A. Yes.
 17 Q. All right. The first few pages through
 18 Howell 2717 are invoices from RaPower3, correct?
 19 A. Correct.
 20 Q. These are invoices for -- well, we'll just
 21 take a look real quick at Howell 2716. Are you on
 22 that page?
 23 A. Yes.
 24 Q. All right. So this invoice has a purchase
 25 date of December 31, 2011. Do you see that?

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1 A. Yes.
 2 Q. And the units purchased is one, correct?
 3 A. Correct.
 4 Q. And the description is 600-watt solar
 5 thermal lens. Did I read that correctly?
 6 A. Correct.
 7 Q. So here, Mr. Howell, it looks like the
 8 only thing that's purchased is a lens.
 9 A. On the invoice, yes.
 10 Q. Do you have any understanding why the
 11 invoice would say lens if something else were
 12 included?
 13 A. For the -- to make it simplified for
 14 people to look at.
 15 Q. And if you'd take a look, please, at down
 16 payment, it says \$1,050. Do you see that?
 17 A. Mm-hmm.
 18 Q. Yes?
 19 A. Yes, ma'am.
 20 Q. Then it says full unit price, \$3,000. Do
 21 you see that?
 22 A. Yes.
 23 Q. Do you have an understanding of why the
 24 down payment is there?
 25 A. That was how much you were going to be

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1 paying before the rental income actually paid on the
 2 back end of the note.
 3 Q. So would the down payment have to be paid
 4 in full before any potential rental income could be
 5 delivered to the owner?
 6 A. Yes.
 7 Q. All right. Then if we look below, we've
 8 got a couple of entries under payment date. Do you
 9 see that?
 10 A. Yes.
 11 Q. Both payments are made in 2012, correct?
 12 A. Yes.
 13 Q. For a total of \$1,050, right?
 14 A. Correct.
 15 Q. Mr. Howell, for the -- the pages marked
 16 Howell_John 2710 through 2717, are these the only
 17 invoices -- or I'm sorry. Do these invoices reflect
 18 the only units that you purchased from RaPower3?
 19 A. It looks like it. Let's see if there's
 20 any might be missing. Might be some missing in '15.
 21 Q. Okay. So I see in these invoices lenses
 22 purchased in 2011, 2012, and 2013.
 23 A. Mm-hmm.
 24 Q. Yes?
 25 A. Yes.

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| <p style="text-align: right;">Page 113</p> <p>1 Q. But you believe you bought additional 2 units -- 3 A. Yes. 4 Q. Sorry. Let me finish the question. You 5 believe you bought additional units in 2015? 6 A. Yes. 7 Q. Do you recall when in 2015? 8 A. No. I don't recall when it was. 9 Q. Do you know if it was closer to the 10 beginning of the year -- 11 A. Probably -- 12 Q. -- or to the end of the year? 13 A. Probably September, October. 14 Q. About how many units did you purchase in 15 2015? 16 A. Probably purchased just a couple. 17 Q. Have you purchased any more since 2015? 18 A. I think I purchased a couple in '16. I 19 know I haven't done any in '17. 20 Q. And from your testimony, then, do I 21 correctly conclude that you did not purchase any in 22 2014? 23 A. I don't recall if I did that year or not. 24 Q. Let's take a look, please, at the pages 25 marked Howell_John 2732 through 2739.</p> | <p style="text-align: right;">Page 115</p> <p>1 So they just call it the lens for 2 simplification on the invoice, but here's where it 3 says you are purchasing the system. 4 Q. And where, Mr. Howell, in this contract or 5 elsewhere is the term alternative energy system 6 defined? 7 A. I'm not positive if it is actually 8 defined. Says under paragraph 1 under Background, 9 "Seller is the licensee of certain proprietary 10 alternative energy technology, which" -- 11 Q. Can you slow down? The court reporter -- 12 A. Oh, I'm sorry. 13 Q. Just read it slowly if you're going to 14 read it. 15 A. "Seller is a licensee of certain 16 proprietary alternative energy technology, which 17 technology relates to solar energy collection and 18 which technology is utilized for the design and 19 fabrication of certain components which are 20 identified below and which are hereinafter 21 collectively referred to as the 'Alternative Energy 22 System.'" 23 Q. Great. And it says that these items are 24 identified below. Where are they identified? 25 A. Don't know if they actually put down each</p> |
| <p style="text-align: right;">Page 114</p> <p>1 A. Okay. 2 Q. These pages are the RaPower3 equipment 3 purchase agreement, correct? 4 A. Correct. 5 Q. Which is dated December 15, 2011, right? 6 A. Correct. 7 Q. Mr. Howell, I don't believe I saw any 8 other equipment purchase agreements in your 9 production of documents other than this 10 December 2011. 11 A. That would have all been duplicates of the 12 very same thing, just different dates, but 13 everything would have been the same. 14 Q. Okay. That's just my question. The other 15 equipment purchase agreements that you signed -- let 16 me finish -- were essentially the same as this one 17 that we're looking at in Plaintiff's Exhibit 587? 18 A. Correct. And if you will read under the 19 paragraph, "Now, therefore, the parties here agree 20 as follow. System purchased. Seller hereby sells 21 to Purchaser and Purchaser hereby purchases from 22 Seller the Alternative Energy Systems. The number 23 of Alternative Energy Systems purchased by Purchaser 24 from Seller under this agreement shall be," and the 25 number.</p> | <p style="text-align: right;">Page 116</p> <p>1 of the individual items by themselves. They just 2 group it all together, related alternative energy 3 system and its components. So I guess I could have 4 made a request to give me a list of every component 5 I'm buying, nuts, bolts, wires, cables, but I 6 didn't. 7 Q. How did you know what you were buying? 8 A. My contract says I was buying the 9 alternative energy system. Didn't say just the lens 10 themselves. 11 Q. So how do you know what an alternative 12 energy system is? 13 A. I guess I can request them to break down 14 each and every component of that system so that I 15 can list it all, the wires, the cabling, the 16 framing, the tower, the everything. I just never 17 took the initiative to request a total breakdown of 18 everything in the system. 19 Like when I buy a computer, I don't say, 20 now, I want it broken down to how many of this is on 21 there, how many of this is on there and what makes 22 up the circuit board and I want to make sure all my 23 circuits are in my circuit board and -- 24 Q. Why didn't you ask for what you were 25 actually buying?</p> |

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1 A. I just never asked them to give me a list
 2 of everything I was buying.
 3 Q. Well, I guess that's my question. So you
 4 identified a bunch of things in what you -- in what
 5 an alternative energy system might include, but you
 6 don't know exactly what it includes, do you?
 7 A. Precisely, no.
 8 Q. But you're willing to pay \$1,050 down
 9 payment for each system?
 10 A. Mm-hmm.
 11 Q. Yes?
 12 A. I did, yes, I did.
 13 Q. Even though you don't know what it is?
 14 A. Even though I don't know all of the nuts
 15 and bolts and all of that.
 16 Q. Do you know whether it's a whole tower?
 17 A. If you purchase enough of the lenses, then
 18 you purchase all of the complete tower assembly
 19 because I think there's 14 lenses in a tower.
 20 Q. So let's just assume that there are 14
 21 lenses in a tower. So in your mind, if you have
 22 purchased 14 lenses -- excuse me -- if you have
 23 purchased 14 systems, you own the lenses, the tower,
 24 and everything attached to the tower?
 25 A. In theory, yes. That's --

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1 Q. Is that what you believe?
 2 A. I would think I own the lenses, the -- the
 3 bracing, the cabling, and all of that. The actual
 4 tower itself I'm not positive of, but the actual
 5 lenses and all of that it comprises in the system I
 6 would think so. Guess I need to ask them to give me
 7 a total breakdown of everything that comprises of a
 8 system.
 9 Q. Let's take a look at Howell 2718
 10 through -- oh, excuse me real quick. Put that on
 11 pause.
 12 The last page of the equipment purchase
 13 agreement is on page Howell_John 2739. Mr. Howell,
 14 your name is typewritten on this page. Do you see
 15 that?
 16 A. Yes.
 17 Q. How did you sign this equipment purchase
 18 agreement?
 19 A. Digitally.
 20 Q. So you went to a website?
 21 A. (Witness nods head.)
 22 Q. Yes?
 23 A. Yes.
 24 Q. Did you enter information into that
 25 website?

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1 A. Yes.
 2 Q. What information did you enter?
 3 A. The basic equipment purchase, the invoice,
 4 how many in -- how many units was being purchased,
 5 and then acknowledge the equipment purchase
 6 agreement as well as the operation and maintenance
 7 agreement.
 8 Q. Okay. But --
 9 A. And then put in your name and sign it as a
 10 digital signature.
 11 Q. Okay. So let me -- I just want to make
 12 sure I understand. Let me slow down a little bit.
 13 So what website did you go to in order to --
 14 A. RaPower3.
 15 Q. Okay. And then you gave the website your
 16 information, you gave it your name? Yes?
 17 A. Yes.
 18 Q. And your address?
 19 A. Yes.
 20 Q. And you put in the number of systems you
 21 wanted to purchase?
 22 A. Yes.
 23 Q. Then what happened?
 24 A. Then I pressed enter. Then this says
 25 about the contracts and everything. You accept the

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1 contracts or equipment purchase agreement, the
 2 operation and maintenance agreement.
 3 Q. So at the time you put in your information
 4 and then you -- did you then see the equipment
 5 purchase agreement?
 6 A. I had already seen them. They had them on
 7 their website for you to actually look at and to
 8 read so that you knew what they said.
 9 Q. Okay. So you had the opportunity to read
 10 the equipment purchase --
 11 A. Yes.
 12 Q. -- agreement?
 13 A. Yes.
 14 Q. And when you decided you wanted to sign
 15 the equipment purchase agreement, what did you have
 16 to do?
 17 A. Just acknowledge that I was -- put in my
 18 name that I accepted the purchase agreement.
 19 Q. Okay. Did -- so anyway, you digitally
 20 signed this equipment purchase agreement?
 21 A. Yes.
 22 Q. Yes. Okay.
 23 A. Yes.
 24 Q. All right. So let's take a look now at
 25 the operation and maintenance agreement, which is on

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| <p style="text-align: right;">Page 121</p> <p>1 pages Howell_John 2718 through 2731. And this, 2 Mr. Howell, is the operation and maintenance 3 agreement that you signed at the same time as the 4 equipment purchase agreement we just saw? 5 A. Yes. 6 Q. And to your knowledge, is the operation 7 and maintenance agreement we're looking at in 8 Plaintiff's Exhibit 587 basically the same as any 9 other operation and maintenance agreement you would 10 have signed with RaPower3? 11 A. Yes. 12 Q. Okay. So if we take a look at this 13 operation and maintenance agreement, the RaPower3 14 logo is in the upper left-hand side. Do you see 15 that? 16 A. Yes. 17 Q. But this agreement itself is between you 18 and LTB, LLC. Do you see that? 19 A. Yes. 20 Q. And on the last page of the operation and 21 maintenance agreement, we see your digital 22 signature, correct? 23 A. Yes. 24 Q. And then underneath it says "Seller by 25 Neldon Johnson, RaPower3." Did I read that</p> | <p style="text-align: right;">Page 123</p> <p>1 thousand, a hundred, 20? No, you're the first one. 2 Okay. I'll give you a shot then, let's see what you 3 do. 4 Q. I'm sorry, Mr. Howell, are you 5 comparing -- 6 A. I'm just showing that -- 7 Q. Excuse me. I'm asking you a question. 8 Are you comparing the expertise it takes to mow your 9 grass with the expertise it takes -- excuse me -- 10 with the expertise it takes to operate a solar 11 energy power plant? 12 A. No. Just an example that they -- they 13 have to begin somewhere. Somebody started the first 14 of that technology at some point in time without any 15 experience. Somewhere somebody did it in almost 16 every industry. They had to be the first because 17 that technology wasn't there. Nobody had ever done 18 it before for them to learn from. 19 Q. Mr. Howell, though, you said that you had 20 looked into concentrating solar power before, 21 however, correct? 22 A. I had -- 23 Q. Correct? 24 A. Yes. 25 Q. And so you know that there are companies</p> |
| <p style="text-align: right;">Page 122</p> <p>1 correctly? 2 A. Yes. 3 Q. Did you ever wonder why a contract 4 purportedly between you and LTB was signed by 5 someone on behalf of RaPower3? 6 A. If they're owners and they have the 7 authorization to do so. 8 Q. Did you ever wonder why? 9 A. Well, I had actually looked up, like I 10 said, LTB, LLC, and it showed Neldon Johnson as one 11 of the owners. 12 Q. So you didn't wonder why? 13 A. No. 14 Q. Okay. And we did talk a little bit about 15 your brief inquiry into LTB, LLC, earlier. Would it 16 surprise you to learn that LTB, LLC, has never 17 operated a solar energy power plant? 18 A. No. 19 Q. Does that raise any concern with you about 20 LTB's ability to effectively operate your solar 21 lenses? 22 A. Not necessarily. Everybody begins at some 23 point in time doing something, you know. Somebody 24 comes and wants to mow your grass. Well, how many 25 grass experience do you have? Have you mowed a</p> | <p style="text-align: right;">Page 124</p> <p>1 who do operate concentrating solar energy power 2 plants, right? 3 A. Yes. 4 Q. Okay. So real quick, just to backtrack, 5 this operation and maintenance agreement, to your 6 understanding, what does this contract mean? 7 A. It means that LTB, LLC, is going to 8 maintain and operate the solar systems, if there's 9 damages, everything, that they replace them, they 10 take care of them, they maintain it. 11 Q. So essentially, Mr. Howell, correct me if 12 I'm wrong, but you purchased two systems from 13 RaPower3, correct? 14 A. Yes. 15 Q. And then you believe you leased them to 16 LTB, LLC, correct? 17 A. Correct. 18 Q. By virtue of this agreement? 19 A. Yes. 20 Q. And you're expecting your systems to 21 generate rental income for you, correct? 22 A. Yes. 23 Q. Because of LTB, LLC's operation of those 24 systems, correct? 25 A. Yes.</p> |

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1 Q. But it doesn't matter to you whether LTB
2 has ever operated any system successfully or not?
3 A. Somebody has to learn the game sometime.
4 Q. And you're willing to let them learn their
5 game on your dime?
6 A. Yes.
7 MR. PAUL: Objection. Argumentative.
8 BY MS. HEALY GALLAGHER:
9 Q. Would it surprise you to learn that LTB
10 has never taken any action whatsoever?
11 A. It might.
12 Q. I'll represent to you that Neldon Johnson
13 testified approximately six weeks ago that LTB, LLC,
14 has never done anything. Does that raise any
15 concerns for you?
16 A. It could be they didn't have anything
17 to -- to take over at that particular time to do
18 something with.
19 MS. HEALY GALLAGHER: Object to the
20 responsiveness of the answer.
21 Would you read back my question, please.
22 THE REPORTER: "Question: I'll represent
23 to you that Neldon Johnson testified approximately
24 six weeks ago that LTB, LLC, has never done
25 anything. Does that raise any concerns for you?"

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1 A. Not necessarily.
2 BY MS. HEALY GALLAGHER:
3 Q. Does it raise any concern for you that
4 LTB, LLC, doesn't even have a bank account?
5 MR. PAUL: Objection. Asked and answered.
6 A. Not necessarily.
7 BY MS. HEALY GALLAGHER:
8 Q. Why aren't you concerned about LTB not
9 having done anything?
10 A. Until the solar field is completed that
11 they are working on, then they don't turn it over to
12 LTB until that time, so --
13 Q. Let's take a look, please, at paragraph
14 2.1 of the operation and maintenance agreement. The
15 title of the subparagraph is "Appointment," and it
16 says, "The Owner appoints the Operator and the
17 Operator accepts the appointment to perform the
18 following services subject to and in accordance with
19 the provisions of this Agreement, collectively, the
20 'Work.' 2.1.1, Routine O&M services; 2.1.2,
21 Additional services; and 2.1.3, Transition
22 services."
23 Did I read that correctly?
24 A. Yes.
25 Q. Mr. Howell, what are routine O&M services?

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1 A. Typically they check out the equipment to
2 see if it's working properly.
3 Q. How do you know that?
4 A. How do I know what O&M services is? Is
5 that the question?
6 Q. That's the question.
7 A. I've been in manufacturing before. We did
8 operation and maintenance services on equipment,
9 machinery, so I know what it is.
10 Q. How do you know what that means with
11 respect to solar energy systems?
12 A. It would go into the same thing, that they
13 would have to make sure that the equipment is
14 operating per the guidelines that have been
15 established for them too, and they check out the
16 equipment.
17 Q. Where --
18 A. If something's broken, replace it.
19 Q. Where, Mr. Howell, in this agreement are
20 routine O&M services defined?
21 A. As far as I know, they don't break it down
22 exactly under all the details of routine operation
23 and maintenance.
24 Q. So how could you possibly know if LTB,
25 LLC, was ever meeting its obligations under this

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1 contract?
2 A. As far as I know, they don't have anything
3 under the contract yet because they have not taken
4 over the solar field yet that is currently being
5 still in the production stage.
6 Q. Well, let's say they do someday take it
7 over. How will you know whether LTB, LLC, is
8 meeting its obligations to you under this contract?
9 A. I can go out there and look at it.
10 Q. How will you know whether LTB, LLC, is
11 actually performing whatever routine O&M services
12 means?
13 A. Request maintenance logs.
14 Q. But, sir, like if you don't know what
15 exactly they're supposed to be doing -- like, what
16 have they agreed to here?
17 A. When you look at typical O&M --
18 Q. Sir, if you don't know, just say you don't
19 know.
20 A. Under typical operation and maintenance
21 servicing, they usually give them a punch list of
22 items that they would need to be checking out. So
23 until they take over the solar field, then they
24 might have that information at that time, say, okay,
25 when we perform our operation and maintenance, this

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1 is what we do on a daily, a weekly, a monthly
 2 schedule. Until that time, they haven't taken over
 3 yet.
 4 Q. Have you ever seen such a punch list?
 5 A. I've seen similar.
 6 Q. No, no, no. For your solar energy
 7 systems, have you seen any punch list that would be
 8 the routine O&M services?
 9 A. No, I haven't. I haven't requested it
 10 either.
 11 Q. Do you know what additional services means
 12 in the course for this contract under paragraph
 13 2.1.2?
 14 A. No. And I've never asked for it.
 15 Q. What about transition services? Do you
 16 know what that means?
 17 A. Under this particular agreement, have I
 18 asked them what that -- how they define transition
 19 services? No, I haven't.
 20 Q. Does this contract define transition
 21 services?
 22 A. Not that I'm aware of.
 23 Q. Does this contract define additional
 24 services?
 25 A. Not that I'm aware of.

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1 Q. Under paragraph 2.3, Operation and
 2 Maintenance Services, there's a reference to the
 3 safety and operating guidelines provided by RaPower3
 4 to operator. Do you see that?
 5 A. Yes.
 6 Q. Have you ever seen the safety and
 7 operating guidelines identified here?
 8 A. No. And I've never asked for them.
 9 Q. Any reason why not?
 10 A. They're not in operation yet, so --
 11 Q. So here's what I'm --
 12 A. They could be developing those guidelines
 13 so that when they do take over the operation that
 14 they're in place, and then they can -- then I can
 15 request them.
 16 Q. So here's what I'm trying to understand.
 17 You purchased systems from RaPower3. Yes?
 18 A. Yes.
 19 Q. And then you lease them to LTB.
 20 A. Yes.
 21 Q. Where are they?
 22 A. They're currently in production in the
 23 production field --
 24 Q. Physically.
 25 A. -- being put together.

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1 Q. No, sir. I'm sorry, sir. We missed each
 2 other on that one. Physically where are they?
 3 A. In the production field being put up on --
 4 on towers and such.
 5 Q. Is that in Millard County, Utah?
 6 A. I can't give you the exact location. I've
 7 never been there.
 8 Q. You don't know where your systems are?
 9 A. I haven't looked to see exactly --
 10 Q. Sir, excuse me. Not what I was looking
 11 for. Do you know where your systems are?
 12 A. Precisely, no.
 13 Q. Imprecisely?
 14 A. In Utah at their development site where
 15 they take people when they do their tours to show
 16 them the progress of it.
 17 Q. How do you know that your systems are in
 18 Utah at the development site?
 19 A. Well, I guess I can't really know until I
 20 go there and ask them which ones specifically are
 21 the ones I purchased.
 22 Q. Have you ever done that?
 23 A. No.
 24 Q. Why not?
 25 A. Because I haven't been in Utah in the last

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1 year or two to take a tour for them to show me
 2 exactly where that they are putting them up and
 3 which ones are going to be mine.
 4 Q. Sir, you bought systems in 2011.
 5 A. Yes, I did.
 6 Q. And you went to visit in 2012.
 7 A. Yes.
 8 Q. Why didn't you ask then?
 9 A. They had not started the production field.
 10 They were still finish doing research and
 11 development, and they had not started work yet on
 12 the production field where they were going to put up
 13 the towers.
 14 Q. So then to your understanding, Mr. Howell,
 15 did the systems you purchased in 2011 even exist in
 16 2012?
 17 A. Yes.
 18 Q. Where were they?
 19 A. Part of it was in their warehouse with the
 20 components that were being put together.
 21 Q. Were they assembled?
 22 A. Some was assembled.
 23 Q. Yours?
 24 A. I didn't go and ask them is this one mine,
 25 is this one mine, is this one mine.

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| <p style="text-align: right;">Page 133</p> <p>1 Q. And one of the things I'm trying to 2 understand, Mr. Howell, is how you know yours even 3 exist. 4 A. How do I know my specific ones exist? 5 Q. Yes. 6 A. I don't really know because I never really 7 asked them which ones were specifically mine. 8 Q. As an enrolled agent, sir, does that cause 9 you any concern about whether this is an abusive tax 10 scam? 11 A. Not particularly. I mean, they're still 12 in the works. They haven't finalized anything. 13 They're still working. 14 Q. When you visited in 2014 or 2015, did you 15 ask Mr. Shepard, hey, how can I find out which ones 16 of these things are mine? 17 A. No. 18 Q. Why not? 19 A. Because they didn't know I was coming. I 20 just had a brief conversation with him, is there 21 going to be anybody at the plant that can show me 22 around, take me -- take me where -- anyplace, and he 23 said let me find out. 24 Q. So if you wanted to know which systems 25 were yours, who would you ask?</p> | <p style="text-align: right;">Page 135</p> <p>1 be a good price. 2 Q. Did you ever get any independent opinion 3 or appraisal of what the system was worth? 4 A. No. 5 Q. Did you ever do any sort of profit 6 analysis for buying the lens -- the system versus 7 not buying it? 8 A. Once they're in production, then, yes, 9 there will be substantial incomes that will be 10 generated. 11 Q. Did you ever write that analysis down, or 12 was this just in your head? 13 A. I'm sure I probably put it down somewhere. 14 Q. Have you ever done a business plan with 15 respect to your lens purchases? 16 A. No. 17 Q. Did you negotiate any terms of the 18 equipment purchase agreement? 19 A. No. 20 Q. Did you negotiate any terms of the 21 operation and maintenance agreement? 22 A. No. 23 Q. Take a look, please, at page marked 24 Howell_John 2740 through 2741. Mr. Howell, this is 25 the distributor application that you filled out,</p> |
| <p style="text-align: right;">Page 134</p> <p>1 A. I imagine whoever the manager is at the 2 construction site. 3 Q. Do you have any idea how that person might 4 be able to figure out which one is yours? 5 A. I'm sure they have some kind of inventory 6 or identification records in process that would 7 identify which ones they were. 8 Q. Have you ever asked them whether they have 9 such a system? 10 A. Haven't been out there to do so. 11 Q. Have you ever asked them whether they have 12 a system to track which system is yours? 13 A. No. 14 Q. Mr. Howell, did you ever negotiate the 15 price of a lens? Excuse me. Did you ever negotiate 16 the price for a system? 17 A. No. 18 Q. Any reason why not? 19 A. Thought that the price was fair. 20 Q. Why did you think the price was fair? 21 A. Just in my mind. I'd never seen any solar 22 commercial lenses for sale. I knew that home 23 systems, you can pay a few thousand, several 24 thousand dollars for them. So, figured if it's part 25 of a commercial project, a few thousand for it could</p> | <p style="text-align: right;">Page 136</p> <p>1 correct? 2 A. Yes. 3 Q. So it looks here like, sir, if you take a 4 look at the e-mail address, you used that 5 jhowell@howelltax.com e-mail address, right? 6 A. That was -- yes, we did. 7 Q. And in step 2 we see that it's asking for 8 your sponsor information, and that sponsor is Janet 9 Roe, correct? 10 A. Correct. 11 Q. By completing this distributor 12 application, what, if anything, did that mean for 13 you and RaPower3? 14 A. You can earn commissions is what that 15 means. 16 Q. So basically by filling this out, you then 17 got permission to sell RaPower3 systems? 18 A. Right, like in any network marketing. 19 Q. And let's just take a look at the last 20 page, which is 2742. This is an alternative energy 21 system purchase referral fee contract, right? 22 A. Yes. 23 Q. And it appears to be made between RaPower3 24 and you. Do you see that in the top couple of 25 lines?</p> |

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| <p style="text-align: right;">Page 137</p> <p>1 A. Yes.</p> <p>2 Q. And this contract, I believe this is the</p> <p>3 bonus situation you were talking about earlier?</p> <p>4 A. Yes.</p> <p>5 Q. Yeah. Okay. So there's no signature for</p> <p>6 the RaPower3 managing partner on your copy of this</p> <p>7 contract. Do you see that?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Yes?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have a signed copy?</p> <p>12 A. I believe I do.</p> <p>13 Q. So, Mr. Howell, if this contract is</p> <p>14 between you and RaPower3, how does RaPower3 have any</p> <p>15 claim on paying money based on International</p> <p>16 Automated Systems' gross revenue?</p> <p>17 A. Based on the ownership of the RaPower3 and</p> <p>18 the common ownership of AIUS.</p> <p>19 MR. PAUL: I'm going to object to that</p> <p>20 last question on foundation.</p> <p>21 BY MS. HEALY GALLAGHER:</p> <p>22 Q. Your understanding, sir, is that RaPower3</p> <p>23 could sign that contract because it had the same</p> <p>24 owner as Neldon Johnson?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 139</p> <p>1 Did I read that correctly?</p> <p>2 A. Yes.</p> <p>3 Q. Mr. Howell, what's your understanding of</p> <p>4 how RaPower3 put your equipment into service?</p> <p>5 A. When the items are produced and available</p> <p>6 for -- to be put into the system, then they are</p> <p>7 eligible for the credit and so is the components</p> <p>8 that make up the system.</p> <p>9 Q. So, Mr. Howell, how did RaPower3 put into</p> <p>10 service your equipment in 2011?</p> <p>11 A. They had already produced a number of the</p> <p>12 lenses, as you call them, and they were for sale to</p> <p>13 people at that time and they were available to be</p> <p>14 put together with other subcomponents at the time of</p> <p>15 purchase.</p> <p>16 Q. Mr. Howell, when you visited in 2012,</p> <p>17 about how many towers did you see that had been</p> <p>18 constructed?</p> <p>19 A. I only went to the research and</p> <p>20 development site. I didn't go to any production</p> <p>21 sites. But we did see the lenses that were there.</p> <p>22 We saw lenses that were framed up, cabling on the</p> <p>23 lenses so that they were in the production state.</p> <p>24 MS. HEALY GALLAGHER: Would you read back</p> <p>25 my question, please.</p> |
| <p style="text-align: right;">Page 138</p> <p>1 (Exhibit 588 marked)</p> <p>2 Q. Handing you, sir, what's been marked</p> <p>3 Plaintiff's Exhibit 588. Please take a look at that</p> <p>4 and let me know when you are done.</p> <p>5 For the record, Plaintiff's 588 is marked</p> <p>6 Howell_John 2681.</p> <p>7 Do you recognize Plaintiff's Exhibit 588?</p> <p>8 A. Yes.</p> <p>9 Q. What is it?</p> <p>10 A. It was the placed-in-service letter.</p> <p>11 Q. And this is a true and accurate copy of a</p> <p>12 letter that you produced to the United States?</p> <p>13 A. I believe it was.</p> <p>14 Q. So this is a letter from RaPower3 to you,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And the first line of the letter -- I'm</p> <p>18 sorry. It's dated February 2, 2012, correct?</p> <p>19 A. Yes.</p> <p>20 Q. The first line of the letter says, "This</p> <p>21 letter is regarding the alternative energy systems</p> <p>22 that you purchased from RaPower3, LLC. RaPower3 put</p> <p>23 into service your equipment on or before</p> <p>24 December 31, 2011. This will qualify you for the</p> <p>25 Internal Revenue Services solar energy tax credit."</p> | <p style="text-align: right;">Page 140</p> <p>1 THE REPORTER: "Question: Mr. Howell,</p> <p>2 when you visited in 2012, about how many towers did</p> <p>3 you see that had been constructed?"</p> <p>4 A. None, because I did not go to the</p> <p>5 construction site. We went to the research and</p> <p>6 development site.</p> <p>7 BY MS. HEALY GALLAGHER:</p> <p>8 Q. On any place you visited personally, I</p> <p>9 don't care where you didn't go, where you visited</p> <p>10 how many towers did you see?</p> <p>11 A. 16, 17, 18.</p> <p>12 Q. And when you drove by in 2014 or 2015, how</p> <p>13 many towers did you see?</p> <p>14 A. It was the same place that I went to, the</p> <p>15 research and development.</p> <p>16 Q. How many towers did you see?</p> <p>17 A. About the same.</p> <p>18 Q. Did you see any other towers?</p> <p>19 A. No.</p> <p>20 Q. I think one of the difficulties I'm having</p> <p>21 is that we're calling these things alternative</p> <p>22 energy systems and you're talking about these</p> <p>23 systems being put into a system and that means that</p> <p>24 they're placed in service. So I'm just trying to</p> <p>25 understand what we're talking about here, so we're</p> |

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| <p style="text-align: right;">Page 141</p> <p>1 going to break this down slowly.</p> <p>2 You have testified that your understanding</p> <p>3 is that an alternative energy system is more than</p> <p>4 just a lens.</p> <p>5 A. Correct.</p> <p>6 Q. Correct. Okay. So for any alternative</p> <p>7 energy system, which is more than a lens, how was</p> <p>8 such a system put into service?</p> <p>9 MR. PAUL: I'm going to object to the</p> <p>10 extent it's been asked and answered.</p> <p>11 BY MS. HEALY GALLAGHER:</p> <p>12 Q. On or before December 31, 2011.</p> <p>13 A. This goes back to what is a system.</p> <p>14 According to you, the system was just the lens,</p> <p>15 because we don't have a component breakdown.</p> <p>16 Q. Mr. Howell, I'm going to stop you there</p> <p>17 because I'm using your definition. I'll go with you</p> <p>18 on this.</p> <p>19 A. And I --</p> <p>20 Q. I'll go with you on this. Okay. A system</p> <p>21 is a lens plus. It's a lens plus.</p> <p>22 To your understanding, how was a lens plus</p> <p>23 that you bought in 2011 put into service in 2011?</p> <p>24 A. It was placed into service --</p> <p>25 MR. PAUL: Objection that it's already</p> | <p style="text-align: right;">Page 143</p> <p>1 Q. -- at the manufacturing plant. Those</p> <p>2 pallets are rectangles, are they not?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So do you know what has to happen</p> <p>5 between the rectangle that arrives and the triangles</p> <p>6 that are framed out? Do you know?</p> <p>7 A. I didn't study it specifically, no, but</p> <p>8 we -- we saw a number of them that were in their</p> <p>9 frames, their cabling and everything, so they do</p> <p>10 produce it.</p> <p>11 Q. Mr. Howell, what I'm asking you is, how is</p> <p>12 a rectangular piece of plastic put into service as a</p> <p>13 lens?</p> <p>14 MR. PAUL: Objection to the extent it's --</p> <p>15 A. Not sure they are actually rectangular in</p> <p>16 formation. They're more pie shaped instead of a</p> <p>17 actual rectangular --</p> <p>18 BY MS. HEALY GALLAGHER:</p> <p>19 Q. Is that how you believe they arrive from</p> <p>20 Lucite, in triangles?</p> <p>21 A. I saw pallets of them that were in the --</p> <p>22 I didn't actually get out there and measure them and</p> <p>23 everything, but they had pallets of them that were</p> <p>24 there. Then they had some that were in the frames</p> <p>25 with the cablings attached to them.</p> |
| <p style="text-align: right;">Page 142</p> <p>1 been asked and answered.</p> <p>2 MR. TEAKELL: If you know.</p> <p>3 A. Because when the lenses are produced and</p> <p>4 purchased, they are available for their intended use</p> <p>5 at that particular time.</p> <p>6 BY MS. HEALY GALLAGHER:</p> <p>7 Q. Okay. You just said -- I just want to</p> <p>8 start at the beginning -- when a lens is produced</p> <p>9 and purchased. Do you mean when a lens is</p> <p>10 manufactured at Lucite?</p> <p>11 A. And delivered to RaPower.</p> <p>12 Q. Okay. And delivered to RaPower. So when</p> <p>13 a lens has been produced by Lucite and is delivered</p> <p>14 to RaPower, does that mean to you it has been put</p> <p>15 into service?</p> <p>16 A. According to what the code section says,</p> <p>17 if it is available for its intended purpose, then it</p> <p>18 is considered placed in service. Even the</p> <p>19 components that are part of it are considered placed</p> <p>20 in service also. That was through a tax court</p> <p>21 ruling.</p> <p>22 Q. Here's my question. When Lucite produces</p> <p>23 plastic to RaPower3, it's in a rectangle. Right?</p> <p>24 You know that, right? You saw the pallets --</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 144</p> <p>1 Q. And I guess my question now, Mr. Howell,</p> <p>2 is this. You've testified that a system is a lens</p> <p>3 plus components. Yes?</p> <p>4 A. Yes.</p> <p>5 Q. So if you don't know what all the</p> <p>6 components are of what makes a system, how can you</p> <p>7 know whether a system has been completed such that</p> <p>8 it could be put into service?</p> <p>9 A. The entire system doesn't have to be put</p> <p>10 together.</p> <p>11 Q. So -- okay. Let me stop you there because</p> <p>12 I think -- I think I've caught where we're missing</p> <p>13 each other here.</p> <p>14 So what you purchased right now, let's</p> <p>15 call it a lens plus. Will you agree with me on</p> <p>16 that?</p> <p>17 A. Okay.</p> <p>18 Q. Okay. The lens plus, in order for it to</p> <p>19 generate electricity, needs to be placed in a</p> <p>20 greater system. Do you understand that?</p> <p>21 A. Yes.</p> <p>22 Q. Connected with a turbine and a generator.</p> <p>23 Yes?</p> <p>24 A. Yes.</p> <p>25 Q. So is it your testimony that the lens plus</p> |

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| <p style="text-align: right;">Page 145</p> <p>1 need not be fully assembled in order to be put into 2 service? 3 A. True. 4 Q. So -- so it's sufficient for Lucite to 5 have delivered the plastic of the lens to RaPower3 6 for a lens plus to have been placed in service? 7 A. When RaPower receives them, then they 8 start putting the frames and they put the components 9 on them. At what stage are the ones you actually 10 purchased at? Without you going there and saying is 11 this one mine that's got all of the cabling on it or 12 is mine out there on the table, because they are -- 13 they've had these already produced. They're already 14 putting components on them, and it says that once 15 they're available for their intended use, they are 16 available for their intended use. It doesn't say it 17 has to be a complete system as itself. It says that 18 the components still qualify also. 19 MS. HEALY GALLAGHER: Would you read back 20 my question, please. 21 THE REPORTER: "Question: So it's 22 sufficient for Lucite to have delivered the plastic 23 of the lens to RaPower3 for a lens plus to have been 24 placed in service?" 25 A. Possibility. Because once it's delivered,</p> | <p style="text-align: right;">Page 147</p> <p>1 determine what your tax liability is to try to 2 reduce your tax liability and then you can purchase 3 between a certain number. I think it's take your 4 tax liability times .0007 and give you approximation 5 of how many units you would need if you want to 6 totally offset your tax liability or if you just 7 want to do part of it, all of it. 8 Q. Have you used the RaPower3 calculation to 9 help you decide how many lenses to purchase? 10 A. Not for myself. 11 Q. Have you used it to help other people 12 decide -- 13 A. If they ask. 14 Q. Let me finish the question. Have you used 15 the RaPower3 calculation to help other people decide 16 how many lenses to purchase? 17 A. If they asked, or I told them to go to the 18 RaPower website. It had the calculator on there for 19 them. 20 Q. So is the answer yes? 21 A. Yes. 22 Q. Very quickly back to Plaintiff's 23 Exhibit 588. The letter says that RaPower3 put your 24 equipment into service. Why RaPower3? 25 A. Because it hadn't been signed over to LTB</p> |
| <p style="text-align: right;">Page 146</p> <p>1 they -- 2 BY MS. HEALY GALLAGHER: 3 Q. Yes or no, sir? 4 A. I'll go with yes. 5 MR. PAUL: Objection. Argumentative. I 6 think he answered your question specifically enough. 7 You can't force him to change it. 8 BY MS. HEALY GALLAGHER: 9 Q. Your answer was yes? 10 A. Yes. 11 Q. And is that understanding the basis for 12 related depreciation claims for any one of these 13 systems? 14 A. Yes. 15 Q. Mr. Howell, how many -- how do you decide 16 how many lenses to purchase in any given year? 17 A. I just pick -- see how many I want to 18 purchase. 19 Q. Based on what? 20 A. On what I think I can afford to get that 21 year. I don't use any precise formula or anything. 22 RaPower says you can calculate it based on this 23 formula. 24 Q. What formula is that? 25 A. They say to take your tax liability and</p> | <p style="text-align: right;">Page 148</p> <p>1 yet. 2 Q. Sir, you leased your lenses to LTB. 3 A. Uh-huh. 4 Q. Yes? 5 A. Yes. 6 Q. So what does RaPower3 have to do with 7 lenses at this stage? 8 A. Common ownership. 9 Q. Okay. So in your mind it didn't matter 10 because Neldon Johnson was the owner of all these -- 11 A. Common ownership. 12 Q. Excuse me. Let me finish the question. 13 A. Yes. 14 Q. In your mind it didn't matter because 15 Neldon Johnson was the owner of all of these 16 entities? 17 A. Yes. 18 Q. Mr. Howell, do you consider yourself to be 19 in a trade or business with respect to the solar 20 lenses that you've purchased from RaPower3? 21 A. Yes. 22 Q. What trade or business is that? 23 A. It will be the rental once the rental 24 starts coming in. 25 Q. Any other businesses?</p> |

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1 A. Well, the network marketing part of it
2 will receive commissions from downline purchases.
3 Q. What sort of tasks do you do, if any, to
4 further your business renting out solar lenses?
5 A. Nothing.
6 Q. Has anyone told you that you are in the
7 business of renting out solar lenses?
8 A. They do mention that.
9 Q. Who's "they"?
10 A. RaPower.
11 Q. Who at RaPower?
12 A. Greg Shepard.
13 Q. Why do you believe him?
14 A. Based on the contracts that you're
15 going -- that you are renting them to LTB.
16 Q. Which doesn't actually do anything.
17 A. Until they're in true operational,
18 functional, producing stage, it won't.
19 Q. So, Mr. Howell, who in your mind is
20 responsible for getting this to a functional state
21 such that it could be turned over to LTB?
22 A. It's the RaPower, Greg Shepard and his
23 team, Neldon Johnson.
24 Q. Anyone else, to your knowledge?
25 A. Not that I know of. Might have somebody

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1 else that's doing it. I don't know.
2 Q. Mr. Howell, in fact, you have recruited
3 people into your downline with RaPower3, correct?
4 A. Yes.
5 Q. Do you have an idea of how many people are
6 in the first step below you in your downline?
7 A. No.
8 Q. Is it more than five?
9 A. I'm sure it is. I don't keep track of
10 them.
11 Q. Is it more than 20?
12 A. Don't know.
13 Q. Do you know how many layers your downline
14 goes?
15 A. Maximum it can go is six.
16 Q. Mr. Howell, Rocking H is also a sponsor.
17 A. Yes.
18 Q. Right? Rocking H is in your downline,
19 correct?
20 A. Yes.
21 (Exhibit 589 and Exhibit 590 marked)
22 Q. Sir, you've been handed what's been marked
23 Plaintiff's Exhibit 589 and 590. Please take a look
24 at those and let me know when you're ready.
25 A. Okay.

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1 Q. Plaintiff's Exhibit 589 is marked
2 Ra3 5959. Do you recognize Plaintiff's Exhibit 589?
3 A. No.
4 Q. Do you recognize Exhibit -- Plaintiff's
5 Exhibit 590, which is Bates marked Ra3 5952 through
6 53?
7 A. No.
8 Q. Have you ever logged into your RaPower3
9 member office or back office?
10 A. Sometimes, yes.
11 Q. Are you familiar with how to view your
12 downline?
13 A. Yes.
14 Q. Does it look like this to you?
15 A. No.
16 Q. No? Well, let's take a look, please, at
17 the names on the first section of Plaintiff's
18 Exhibit 589. Wichita Falls Floor, Stanley Mahler,
19 Susan Lesage, Chris Crutcher, Darwin Webb. Do you
20 see those names?
21 A. Yes.
22 Q. Do you recognize those folks as being in
23 your downline?
24 A. Yes.
25 Q. Then if we take a look at Plaintiff's

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1 Exhibit 590, those same names appear in the first
2 section there. Do you see that?
3 A. Yes.
4 Q. So they're also in the downline for
5 Rocking H.
6 A. Yes.
7 Q. Mr. Howell, the dates on Plaintiff's
8 Exhibit 589 and 590 only go into about May 2012. Do
9 you see that?
10 A. Uh-huh.
11 Q. Yes?
12 A. Yes.
13 Q. Have you sold RaPower3 systems to more
14 people than appear on these exhibits since May 2012?
15 A. I'm sure I have.
16 Q. Mr. Howell, when you consider whatever
17 business you might be in with respect to RaPower3,
18 do you separate out the equipment rental business
19 from the network marketing business?
20 A. To me they're the same. They're just all
21 through the RaPower.
22 Q. Do you have a separate bank account for
23 any business you have connected with RaPower3?
24 A. Yes.
25 Q. Do you have -- have you developed any

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| <p style="text-align: right;">Page 153</p> <p>1 marketing materials for your RaPower3 business?</p> <p>2 A. No.</p> <p>3 Q. What kinds of things do you do to further</p> <p>4 any business you have connected with RaPower3?</p> <p>5 A. What do I do? Not a whole lot with</p> <p>6 RaPower3 or some of my other network marketing.</p> <p>7 Q. So when we were talking about Howell Tax</p> <p>8 Service, you could list off four or five core things</p> <p>9 that Howell Tax Service does.</p> <p>10 A. Yes.</p> <p>11 Q. Accounting, bookkeeping, payroll, things</p> <p>12 like that.</p> <p>13 A. Yes.</p> <p>14 Q. Do you have any -- anything that you can</p> <p>15 identify that you do for your RaPower3 business?</p> <p>16 A. Not particularly. I mean, do I maintain a</p> <p>17 website for it? No, I don't do that. Do I put out</p> <p>18 advertising for it? No, I do not do that. It's</p> <p>19 just like my -- my Ignite business. I do maintain a</p> <p>20 website for that, but other than that, I don't</p> <p>21 really promote that business either particularly.</p> <p>22 It's -- they just send me residual checks every</p> <p>23 month, so -- I could actually do more with it, but</p> <p>24 I'm busy as it is, so I don't really concentrate a</p> <p>25 lot on any of the network marketing companies.</p> | <p style="text-align: right;">Page 155</p> <p>1 e-mail that Greg Shepard had sent out.</p> <p>2 Q. So to your knowledge Plaintiff's</p> <p>3 Exhibit 591 came to you from Greg Shepard?</p> <p>4 A. Yes.</p> <p>5 Q. And for the record, Plaintiff's</p> <p>6 Exhibit 591 starts with a document called Series 1</p> <p>7 Solar Lenses?</p> <p>8 A. Yes.</p> <p>9 Q. And then is followed by a couple of</p> <p>10 different documents, all in the series, Series 1</p> <p>11 through 5, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Does this appear to be a true and accurate</p> <p>14 copy of a document you produced to the</p> <p>15 United States?</p> <p>16 A. I believe so. This is something I printed</p> <p>17 off from an e-mail that I had received.</p> <p>18 Q. What, if anything, did you do with</p> <p>19 Plaintiff's Exhibit 591?</p> <p>20 A. I'm not sure if I even read all of them or</p> <p>21 not. I just probably just glanced at them, read</p> <p>22 some of it. I'm not positive I read all of it or</p> <p>23 not.</p> <p>24 Q. Did you ever show this document to anybody</p> <p>25 else?</p> |
| <p style="text-align: right;">Page 154</p> <p>1 Q. Do you have an idea of how much money you</p> <p>2 have made from RaPower3 since you joined?</p> <p>3 A. Not exactly. Probably over the last five,</p> <p>4 six years maybe 20,000.</p> <p>5 Q. Do you put any income from RaPower3 on</p> <p>6 Rocking H tax returns?</p> <p>7 A. Yes, if they receive a commission check.</p> <p>8 Q. Sure. Do you put any depreciation from</p> <p>9 RaPower3 on Rocking H tax returns?</p> <p>10 A. If they've purchased any equipment.</p> <p>11 Q. How many systems has Rocking H purchased</p> <p>12 over time?</p> <p>13 A. Maybe ten, twelve systems.</p> <p>14 Q. Since 2011?</p> <p>15 A. Since 2011.</p> <p>16 (Exhibit 591 marked)</p> <p>17 Q. Mr. Howell, you've been handed what's been</p> <p>18 marked Plaintiff's Exhibit 591. Please take a look</p> <p>19 at that and let me know when you're ready to answer</p> <p>20 questions.</p> <p>21 For the record, this is Bates numbered</p> <p>22 Howell_John 2989 through 2984 (sic).</p> <p>23 A. Okay.</p> <p>24 Q. Do you recognize Plaintiff's Exhibit 591?</p> <p>25 A. Vaguely. These were printed off off of an</p> | <p style="text-align: right;">Page 156</p> <p>1 A. I might have. I'm not sure if I ever did.</p> <p>2 Q. So a couple of these series documents have</p> <p>3 dates at the top, August 28, 2012, through</p> <p>4 September 8, 2012. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Is that approximately when you would have</p> <p>7 received these documents?</p> <p>8 A. I would think so. I'm not positive.</p> <p>9 Q. To your knowledge, did you use the</p> <p>10 information in Plaintiff's Exhibit 591 in the course</p> <p>11 of telling people about RaPower3 or preparing tax</p> <p>12 returns?</p> <p>13 A. Not that I really recall.</p> <p>14 (Exhibit 592 marked)</p> <p>15 Q. Showing you what's been marked Plaintiff's</p> <p>16 Exhibit 592. Please take a look at that and then</p> <p>17 let me know when you are ready to answer questions.</p> <p>18 For the record, it's Bates numbered</p> <p>19 Howell_John 2793 through 2794.</p> <p>20 A. Okay.</p> <p>21 Q. Do you recognize Plaintiff's Exhibit 592?</p> <p>22 A. Yeah, I've seen it.</p> <p>23 Q. Is this a document that you created?</p> <p>24 A. No. This was from an e-mail from Greg</p> <p>25 Shepard.</p> |

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| <p style="text-align: right;">Page 157</p> <p>1 Q. Okay. So you got Plaintiff's Exhibit 592</p> <p>2 from Greg Shepard?</p> <p>3 A. Yes.</p> <p>4 Q. Did you ever use the information in</p> <p>5 Plaintiff's Exhibit 592 to tell people about</p> <p>6 RaPower3?</p> <p>7 A. Not that I'm aware of.</p> <p>8 Q. Did you ever use it in helping you prepare</p> <p>9 tax returns related to RaPower3?</p> <p>10 A. No.</p> <p>11 (Exhibit 593 marked)</p> <p>12 Q. Actually before you take a look at</p> <p>13 Plaintiff's Exhibit 593, is Plaintiff's Exhibit 592</p> <p>14 a true and accurate copy of a document you produced</p> <p>15 to the United States?</p> <p>16 A. I would guess it is.</p> <p>17 Q. Any reason to think it's not?</p> <p>18 A. No.</p> <p>19 Q. Okay.</p> <p>20 A. I think it is.</p> <p>21 Q. All right. Take a look at 593, please.</p> <p>22 And let me know when you're ready. 593 is marked</p> <p>23 Howell_John 2006 through 2007.</p> <p>24 A. Okay.</p> <p>25 Q. Do you recognize Plaintiff's Exhibit 593?</p> | <p style="text-align: right;">Page 159</p> <p>1 Q. Anyone other than the IRS?</p> <p>2 A. Not that I'm aware of because it was</p> <p>3 probably in a audit that I prepared it for.</p> <p>4 Q. Do you remember when you prepared it?</p> <p>5 A. No.</p> <p>6 Q. Is it closer to 2011 or closer to present</p> <p>7 day?</p> <p>8 A. Probably '13, '14, somewhere in that time</p> <p>9 frame, maybe '15, because we did a number of audits.</p> <p>10 Q. Let's take a look, please, at the first</p> <p>11 sentence. "The first thing to remember is that the</p> <p>12 individual purchased business use tangible personal</p> <p>13 property, the lenses, so they could be rented, for</p> <p>14 various reasons, and produce income for the</p> <p>15 businessperson."</p> <p>16 What are the various reasons the lenses</p> <p>17 could be rented?</p> <p>18 A. They could be rented out for somebody to</p> <p>19 produce electricity, heat water, heat a building.</p> <p>20 Q. And of course, to your knowledge, the</p> <p>21 lenses have done none of those things, right?</p> <p>22 MR. TEAKELL: I think he's been asked that</p> <p>23 a few times and he's answered. Object.</p> <p>24 A. Yeah, that's -- the lenses can produce</p> <p>25 heat.</p> |
| <p style="text-align: right;">Page 158</p> <p>1 A. I believe so.</p> <p>2 Q. What is it?</p> <p>3 A. This is some information from IRS's small</p> <p>4 business/self-employment section, requirements for</p> <p>5 operating a business, where it goes on tax returns,</p> <p>6 Schedule C, Schedule E.</p> <p>7 Q. Sure. We'll talk about the content.</p> <p>8 We'll talk about the content in a second. Is this a</p> <p>9 document that you prepared?</p> <p>10 A. I think I had done it in response to an</p> <p>11 audit or something.</p> <p>12 Q. So the answer is yes, you --</p> <p>13 A. I would say yes. It looks familiar.</p> <p>14 Q. Mr. Howell, you prepared Plaintiff's</p> <p>15 Exhibit 593. Yes?</p> <p>16 A. I believe so.</p> <p>17 Q. Do you have an understanding for the</p> <p>18 context that led you to prepare Plaintiff's</p> <p>19 Exhibit 593?</p> <p>20 A. It was probably during a tax audit that</p> <p>21 had come up and using it on why -- why rental income</p> <p>22 is on Schedule C sometimes versus Schedule E.</p> <p>23 Q. Did you share Plaintiff's Exhibit 593 with</p> <p>24 anybody?</p> <p>25 A. I'm sure I did with IRS.</p> | <p style="text-align: right;">Page 160</p> <p>1 BY MS. HEALY GALLAGHER:</p> <p>2 Q. Have they?</p> <p>3 A. Specifically -- see, we can go this round</p> <p>4 and round and round and round all day long.</p> <p>5 Q. Well, Mr. Howell, I'm not interested in</p> <p>6 can they.</p> <p>7 A. I have seen them produce heat.</p> <p>8 Q. Yes. To do what?</p> <p>9 A. Well, to burn a piece of wood to show that</p> <p>10 the intense magnification of the sun can be used to</p> <p>11 produce heat.</p> <p>12 Q. And I mean this with all respect,</p> <p>13 Mr. Howell. So what? So what the lenses can burn</p> <p>14 something on the ground? That's my question,</p> <p>15 Mr. Howell.</p> <p>16 A. No, I have never seen it personally.</p> <p>17 Q. No, no. Sir, my question is --</p> <p>18 MS. HEALY GALLAGHER: Can you read that</p> <p>19 back?</p> <p>20 THE REPORTER: "Question: And I mean this</p> <p>21 with all respect, Mr. Howell. So what? So what the</p> <p>22 lenses can burn something on the ground?"</p> <p>23 A. It shows that they can produce heat.</p> <p>24 BY MS. HEALY GALLAGHER:</p> <p>25 Q. Sir, you're producing heat sitting right</p> |

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| <p style="text-align: right;">Page 161</p> <p>1 here --</p> <p>2 A. True.</p> <p>3 Q. -- as a human being, producing heat.</p> <p>4 A. Mm-hmm.</p> <p>5 Q. That doesn't mean you're part of a system</p> <p>6 that produces energy, right? Electricity, I should</p> <p>7 say.</p> <p>8 MR. PAUL: Objection. Argumentative.</p> <p>9 A. So what's our question?</p> <p>10 BY MS. HEALY GALLAGHER:</p> <p>11 Q. Just because these lenses can burn some</p> <p>12 grass in the desert doesn't mean that they can</p> <p>13 produce electricity. Isn't that right, Mr. Howell?</p> <p>14 MR. PAUL: Objection. Argumentative.</p> <p>15 That's a statement, not a question.</p> <p>16 A. So what's the question?</p> <p>17 BY MS. HEALY GALLAGHER:</p> <p>18 Q. Isn't that right?</p> <p>19 MR. PAUL: Objection. Argumentative.</p> <p>20 A. I'm not sure what your question is --</p> <p>21 BY MS. HEALY GALLAGHER:</p> <p>22 Q. Here's my question.</p> <p>23 A. -- on this particular --</p> <p>24 BY MS. HEALY GALLAGHER:</p> <p>25 Q. Here's my question. Just because a lens</p> | <p style="text-align: right;">Page 163</p> <p>1 Q. I see. Do you recall when you created</p> <p>2 this document?</p> <p>3 A. I'm sure it was during an audit that I</p> <p>4 did.</p> <p>5 Q. Temporally?</p> <p>6 A. '13, '14, '15.</p> <p>7 Q. Do you recall why you created this</p> <p>8 document?</p> <p>9 A. Audit was questioning something about</p> <p>10 business expenses or depreciation or there was a</p> <p>11 question about something on the audit, so I put that</p> <p>12 document together.</p> <p>13 Q. Did you show it to anyone?</p> <p>14 A. Mm-hmm, IRS auditors.</p> <p>15 Q. Anyone else?</p> <p>16 A. Appeals officers.</p> <p>17 Q. Anyone else?</p> <p>18 A. Not that I'm aware of because it was just</p> <p>19 used for audit purposes.</p> <p>20 Q. Did you -- is Plaintiff's Exhibit 594 a</p> <p>21 true and accurate copy of a document you produced to</p> <p>22 the United States?</p> <p>23 A. I believe it is.</p> <p>24 Q. Mr. Howell, how did you go about selling</p> <p>25 RaPower3 systems to other people?</p> |
| <p style="text-align: right;">Page 162</p> <p>1 can concentrate light and burn something on the</p> <p>2 ground in the desert, why do you think it means that</p> <p>3 lens can produce electricity?</p> <p>4 MR. PAUL: See, that's a different</p> <p>5 question. You can answer that.</p> <p>6 MR. TEAKELL: If you know.</p> <p>7 A. I'm not -- I'm not a solar expert, so I</p> <p>8 don't know.</p> <p>9 (Exhibit 594 marked)</p> <p>10 BY MS. HEALY GALLAGHER:</p> <p>11 Q. Mr. Howell, you're being handed what's</p> <p>12 been marked Plaintiff's Exhibit 594. For the</p> <p>13 record, Howell_John 1946 through 47. Please take a</p> <p>14 look at that and let me know when you're ready to</p> <p>15 answer questions.</p> <p>16 A. Okay.</p> <p>17 Q. Do you recognize Plaintiff's Exhibit 594?</p> <p>18 A. Yes.</p> <p>19 Q. Is Plaintiff's Exhibit 594 a document that</p> <p>20 you created?</p> <p>21 A. Yes, for an audit. Cut and paste from IRS</p> <p>22 regulations. I did not actually create it. It was</p> <p>23 just taken from different IRS publications. This is</p> <p>24 all from IRS publications. I did not write all of</p> <p>25 this. I just put it together in this format.</p> | <p style="text-align: right;">Page 164</p> <p>1 A. If someone asked me about it, I told them.</p> <p>2 They'd typically hear from it from somebody else,</p> <p>3 then I would tell them how it worked in theory and</p> <p>4 to go to the website and look at all the information</p> <p>5 that was there, to print out the documents for their</p> <p>6 own -- for their own use, the contracts that they</p> <p>7 were signing and the operation and maintenance</p> <p>8 agreements and everything.</p> <p>9 Q. Did you ever seek people out to tell them</p> <p>10 about it without them first having asked you?</p> <p>11 A. Not particularly, because a lot of us are</p> <p>12 in the same network marketings. We're through</p> <p>13 Ignite or Cierra or different things, and so they</p> <p>14 would hear it from somebody else. Janet talked to a</p> <p>15 lot of people about it.</p> <p>16 Q. So, Mr. Howell, in 2011 when you first</p> <p>17 purchased lenses, you were preparing taxes also at</p> <p>18 Howell Tax Service.</p> <p>19 A. Yes.</p> <p>20 Q. Did you ever suggest to any of your tax</p> <p>21 preparation customers that they may want to purchase</p> <p>22 lenses?</p> <p>23 A. I probably did.</p> <p>24 Q. How would you do that?</p> <p>25 A. I'd usually tell them to look at the</p> |

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| <p style="text-align: right;">Page 165</p> <p>1 RaPower website, see if it's something that they 2 were interested in doing through the network 3 marketing or the tax savings, either one. And most 4 of them were already in network marketing, so they 5 knew the concept of how it worked. 6 Q. So even like if a customer didn't know 7 about RaPower3 and didn't know to ask you about it, 8 nonetheless, you might say to them, hey, there's 9 this thing you might want to check out? 10 A. Possibility. A lot of them I never 11 mentioned it to. 12 Q. Did people ever ask you about the tax 13 benefits? 14 A. I'm sure that they did. 15 Q. And what did you tell them? 16 A. I would tell them that the tax benefits 17 are there. It's in tax law. We don't create any 18 new laws. We just look at what the existing tax 19 laws are, and the law is there. 20 Q. Did you show customers what tax effect 21 buying lenses would have on their tax returns? 22 A. Probably. 23 Q. Did you do that before they bought lenses? 24 A. Probably, some. 25 Q. Did you tell people how much the lenses</p> | <p style="text-align: right;">Page 167</p> <p>1 of tax savings that buying into RaPower3 would 2 provide him. 3 A. I don't recall that conversation. Because 4 he had a big tax bill. He was in oil and gas. 5 Q. Tell me about what you remember about 6 Mr. Penn's tax situation with his big tax bill. 7 A. All I know is that he did pay a 8 substantial amount of taxes because of the business 9 he was in. He made a lot of money. And I'm sure we 10 had a conversation on trying to reduce his tax bill. 11 I probably told him to, if he was interested, to 12 look at the RaPower, see if it's something he wanted 13 to do or not. I don't know if he ever did or not. 14 Q. Well, he said that you told him about how 15 many units he should buy. 16 A. I said based on your -- we went -- 17 probably went to the website and used that to 18 calculate based on his tax information, because they 19 had an online calculator. 20 Q. Is your interaction with Mr. Penn similar 21 to other interactions you had with your customers? 22 A. Some of them probably, yeah. 23 Q. You helped other people figure out how 24 many units they should buy? 25 A. Yeah, we usually used the RaPower</p> |
| <p style="text-align: right;">Page 166</p> <p>1 cost? 2 A. I always told them to go to the RaPower 3 website on that because I didn't look at it every 4 day to see if the prices were the same. They 5 usually were, but I told them, hey, you got to 6 purchase them through them, so check with them to 7 see what they're -- I said typically it's been 8 \$3,000 or \$3,500, but I can't give them the price 9 because I don't know it. 10 Q. Right. But the tax benefits of buying any 11 RaPower3 system are based on the price that the 12 customer pays for each lens, correct? 13 A. Yes. That's why I told them to always go 14 to RaPower because they set the price. 15 Q. Are you familiar with a man named Mike 16 Penn? 17 A. Mike Penn. 18 Q. One of your tax return customers? 19 A. Yes. I haven't talked to Mike in years. 20 Q. But he is one of your at least former -- 21 A. Yes. 22 Q. -- tax return preparation customers? 23 A. Yes. 24 Q. So he said that you called him into your 25 office because you wanted to illustrate the amount</p> | <p style="text-align: right;">Page 168</p> <p>1 calculator. 2 Q. Did you explain to folks about carrying 3 back unused credits? 4 A. Yes. They would ask how it would be used 5 because they could read that on the RaPower website. 6 That's where all of that information is -- is 7 listed. If they ask me about it, then I'd tell 8 them, yes, they could. 9 Q. So what would you tell them? 10 A. That if they had -- if they purchased more 11 systems than they could utilize in one year, 12 according to tax law, they could carry them back to 13 one preceding year. 14 Q. And that's something that you did for Mike 15 Penn? 16 A. I don't recall. I haven't done his in a 17 number of years, so I'm not sure. I might have. 18 Q. Do you recall having done that for other 19 customers? 20 A. I'm sure I did. 21 Q. About how many people would you say you've 22 talked to about RaPower3 in an effort to sell lenses 23 since 2011? 24 A. Fifteen, twenty people, because it's -- if 25 you do it through your network marketing, you want</p> |

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| <p style="text-align: right;">Page 169</p> <p>1 them to -- to do most of it for you, just like any 2 network marketing. You just -- you might have a 3 small team, but then that can grow quite a bit by 4 them telling other people. So you don't have to 5 show it to a lot of people. 6 Q. So do I understand you correctly that you 7 personally don't want to talk -- don't need to 8 necessarily talk to a whole ton of people because -- 9 that you want your downline to do that instead? 10 A. Yeah, that's all network marketing is 11 about. 12 Q. Did you ever talk to anyone about RaPower3 13 who then did not buy lenses? 14 A. I'm sure I did. 15 Q. Did any of them ever ask you skeptical 16 questions about RaPower3? 17 A. I imagine they did. I don't recall any 18 off -- particularly offhand. 19 (Exhibit 595 marked) 20 Q. Showing you what's been marked Plaintiff's 21 Exhibit 595. Please take a look at that and let me 22 know when you're done. 23 A. Yeah, they took that down not too long 24 after it was put up, so it shouldn't have been on 25 there.</p> | <p style="text-align: right;">Page 171</p> <p>1 this post, Mr. Howell?" 2 A. Did I alter it? 3 BY MS. HEALY GALLAGHER: 4 Q. Author. 5 A. Author it, yes. 6 Q. And you posted it on Facebook? 7 A. Yes. 8 (Exhibit 596 marked) 9 Q. Mr. Howell, Plaintiff's Exhibit 596 is 10 another screenshot of the Howell Tax Service 11 Facebook page, correct? 12 A. Yes. 13 Q. This post is dated December 31, 2011, 14 correct? 15 A. Yeah. Yeah, they're all posted. 16 Q. And it says, "You can still tax advantage 17 of year end tax deduction today at www.RaPower3.com, 18 sponsor code rockinh." Did I read that correctly? 19 A. Yes. 20 Q. And then we see that there was a link to 21 the RaPower3 home page, correct? 22 A. Yes. 23 Q. Did you write this post? 24 A. I probably did. 25 Q. Any reason to believe you didn't?</p> |
| <p style="text-align: right;">Page 170</p> <p>1 Q. So, Mr. Howell, Plaintiff's Exhibit 595 is 2 a screenshot of the Howell Financial -- I'm sorry, 3 the Howell Tax Service Facebook page, correct? 4 A. Mm-hmm. 5 Q. Yes? 6 A. Yes. 7 Q. The date of the post that we're looking at 8 is December 26, 2011, correct? 9 A. Yes. 10 Q. And the post says, "Here is a great year 11 end tax planning to lower your 2011 and even a 12 refund of 2010 taxes. Go to www.RaPower3.com, 13 sponsor code rockinh, need to have it completed by 14 12/29/11." Did I read that correctly? 15 A. Yes. 16 Q. And then we see the link to RaPower3.com, 17 correct? 18 A. Right. 19 Q. Did you author this post, Mr. Howell? 20 A. I believe we did put it up. I think we 21 took -- supposed to have taken it back down. 22 MS. HEALY GALLAGHER: Object to 23 responsiveness. 24 Would you please read back my question. 25 THE REPORTER: "Question: Did you author</p> | <p style="text-align: right;">Page 172</p> <p>1 A. No. 2 Q. And you posted it to Facebook? 3 A. Yes. 4 Q. Handing you, sir, what's already been 5 marked Plaintiff's Exhibit 242. Please take a look 6 at that and let me know when you've read it. 7 A. Okay. 8 Q. Mr. Howell, do you recognize Plaintiff's 9 Exhibit 242? 10 A. Yes. 11 Q. What is it? 12 A. It was an e-mail from Greg Shepard. 13 Q. Did you receive this e-mail? 14 A. I believe so. 15 Q. So about halfway down the page Mr. Shepard 16 writes, "We do have new RaPower3 Team Member who is 17 licensed to do your taxes in all fifty states. So 18 this is another option. John Howell's info is 19 below." Did I read that correctly? 20 A. Yes. 21 Q. And actually let's take a look real quick. 22 The date on this e-mail is February 10, 2012, 23 correct? 24 A. Yes. 25 Q. Okay. Then under the heading "Tax</p> |

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| <p style="text-align: right;">Page 173</p> <p>1 Preparer Help," it says, "Here is my info if any 2 members need help with their tax return and your CPA 3 is overbooked. We have over 50 years in the tax 4 business. My father, sister, and myself are EA's, 5 enrolled agents with the U.S. Treasury Department. 6 We are licensed to do tax returns in any state." 7 Did I read that correctly? 8 A. Yes. 9 Q. And then underneath it says "John Howell, 10 Howell Financial and Tax Service," correct? 11 A. Yes. 12 Q. And then it has Howell Tax Service contact 13 information, right? 14 A. Yes. 15 Q. So did you write that section about your 16 information? 17 A. I believe so. 18 Q. And you sent it to Greg Shepard? 19 A. I believe so. 20 Q. So that he could share it with RaPower3 21 team members across the country? 22 A. I believe so. 23 Q. Showing you what's been marked Plaintiff's 24 Exhibit 243. Please take a look at that and let me 25 know when you're done.</p> | <p style="text-align: right;">Page 175</p> <p>1 A. An e-mail from -- 2 Q. Just let me know. 3 A. Yes. 4 Q. Okay. Plaintiff's Exhibit 245 is an 5 e-mail from Greg Shepard, correct? 6 A. Yes. 7 Q. Dated May 4, 2012? 8 A. Yes. 9 Q. The middle paragraph of Mr. Shepard's 10 e-mail says, "John Howell won our contest. 11 Congratulations, John. I will award him his 12 \$2,000 bonus contract at our national convention." 13 Did I read that correctly? 14 A. Yes. 15 Q. What contest was that? 16 A. It asked some tax questions or something, 17 and I was the one that correctly answered it. 18 Q. Could you say more about that? What 19 happened? Did Mr. Shepard -- 20 A. Yeah, he had -- he had put out a puzzle or 21 question about taxes or something, if I remember 22 correctly, and I'd answered it correctly. I think 23 there was several of them that he had put out. 24 Q. Take a look at the second page of 25 Plaintiff's Exhibit 245. It's entitled "RaPower3</p> |
| <p style="text-align: right;">Page 174</p> <p>1 A. Okay. 2 Q. Plaintiff's Exhibit 243 is an e-mail from 3 Greg Shepard, correct? 4 A. Yes. 5 Q. Dated Monday, February 20, 2012? 6 A. Yes. 7 Q. Did you receive this e-mail? 8 A. I believe so. 9 Q. Mr. Shepard says, "Here is an e-mail I 10 just got from John Howell who can do your taxes. 11 John is a RaPower3 team member as well." Do you see 12 that? 13 A. Yes. 14 Q. Did you send Greg Shepard the information 15 that he has below? 16 A. Yes. 17 Q. And you expected Mr. Shepard would then 18 share that information with other RaPower3 team 19 members, right? 20 A. Yeah, that were trying to do it on their 21 own through TurboTax because that software had a 22 glitch in it. 23 Q. Showing you what's been marked Plaintiff's 24 Exhibit 245. Please take a look at that and let me 25 know when you're done.</p> | <p style="text-align: right;">Page 176</p> <p>1 Client Synopsis." Do you see that? 2 A. Yes. 3 Q. Did you ever use any of the information in 4 this document to help you sell RaPower3 systems? 5 A. Not that I'm aware of. 6 Q. Did you ever use it to help you prepare 7 tax returns? 8 A. No. 9 (Exhibit 597 marked) 10 Q. Handing you what's been marked Plaintiff's 11 Exhibit 597. Please take a look at that and let me 12 know when you're done. 13 A. Okay. 14 Q. Plaintiff's Exhibit 597 is Bates marked 15 Gregg_P&R 1355. Do you recognize Plaintiff's 16 Exhibit 597? 17 A. Not really, but I'm sure I might have 18 received it, just an e-mail from Greg sent out to a 19 lot of people. 20 Q. And Greg Shepard, one of his e-mail 21 addresses is greg@rapower3.com, right? 22 A. Yes. 23 Q. This e-mail is dated January 24, 2013, 24 correct? 25 A. Yes.</p> |

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| <p style="text-align: right;">Page 177</p> <p>1 Q. Towards the bottom of the page, second 2 paragraph up, Mr. Shepard says, "We do have a great 3 CPA in Bryan Bolander. Contact him at 4 bryan@vcb-cpa.com or John Howell at rockingham@wf.net. 5 Bryan is from Salt Lake City, Utah, and John is from 6 Wichita Falls, Texas. Both have RaPower3 clients 7 from all across the country." Did I read that 8 correctly? 9 A. Yes. 10 Q. And as of January 2013 did you have 11 RaPower3 tax preparation customers from all across 12 the country? 13 A. Yes. 14 Q. About how many customers from outside of 15 the Wichita Falls area do you have? 16 A. Is that all customers or just RaPower 17 customers? 18 Q. All first. 19 A. Well, I've got probably 50, 60. 20 Q. And of those 50 or 60, how many are 21 RaPower3 customers? 22 A. Probably 40 from various states. 23 Q. And let me ask you this. Since 20 -- 24 since 2010 how many customers from outside of the 25 Wichita Falls area has Howell Tax Service had?</p> | <p style="text-align: right;">Page 179</p> <p>1 you've had since 2010 200 people and 100 of those 2 are RaPower3 and 100 are non-RaPower3? 3 A. I've probably had several -- well, we've 4 always had out-of-town clients. We've had clients 5 from California to New York. Some have moved to 6 other cities, other states, and we've maintained 7 them. 8 And so how many are just RaPower3? Maybe 9 a hundred of the out-of-state ones. We might have 10 them one year, and then we might not ever hear from 11 them again. We might pick up a new one in '14, 12 might not ever hear from them. Might have one that 13 we've done them for '12, '13, '14 and '15. So it's 14 going to change year by year. A lot of them do it 15 on their TurboTax or online services or whatever. 16 Once they see how we did their tax returns, they go 17 and do it on their own. 18 Q. Then let me ask you this. What I'm 19 curious about, Mr. Howell, is how many customers 20 you've gotten through RaPower3. 21 A. A hundred. 22 Q. Is that since 2011? 23 A. Yeah, yeah, because it'll go up and down. 24 Like I say, you might get a new one, two or three 25 new ones one year and then lose four or five of</p> |
| <p style="text-align: right;">Page 178</p> <p>1 A. Outside of the Wichita Falls area? 2 Probably -- do you want to include Dallas and 3 Houston, Oklahoma? Because we've had a number of 4 those for years and years. So it would -- hundred. 5 We might have them one year and then not again or -- 6 so it'll fluctuate. 7 Q. And since 2010 how many RaPower3 customers 8 have you had from outside the Wichita Falls area? 9 A. If you total all of them combined, 10 probably over a hundred. But might just do them one 11 year and then another do them again or I might do 12 them for two or three years, so -- 13 Q. And you're talking about tax preparation 14 customers? 15 A. Right, total, all totaled together. So we 16 might see them one year and that's the only time we 17 ever see them. 18 Q. So the number that you gave me of out 19 of -- outside of Wichita Falls area customers since 20 2010, you gave me about a hundred. 21 A. Yeah. It'll -- there -- it might -- 22 overall, because there might be a new one one year 23 and lose one or two one year, and so we -- 24 Q. I want to make sure I understand. So is 25 the total outside of Wichita Falls customers that</p> | <p style="text-align: right;">Page 180</p> <p>1 them. 2 Q. Showing you what's been marked Plaintiff's 3 Exhibit 501. Please take a look at this and let me 4 know when you're ready to answer questions. 5 A. Okay. 6 Q. Have you ever seen Plaintiff's Exhibit 501 7 before? 8 A. No. 9 Q. Okay. That's fine, but I would like to 10 draw your attention to the first sentence -- I'm 11 sorry, first paragraph, last -- well, withdraw that. 12 Let's take a look at the first paragraph. 13 It says, "One of the truly great benefits of 14 attending the RaPower3 National Convention is 15 getting to know fellow team members, linking up 16 faces with names, and learning what techniques have 17 proven successful for them. This year's most 18 memorable line comes from Bob Aulds of Wichita 19 Falls, Texas. This was Bob's first year in RaPower3 20 and at the convention." Did I read that correctly? 21 A. Yes. 22 Q. And you know Mr. Aulds, right? 23 A. Yes. 24 Q. He's in your downline. 25 A. Yes.</p> |

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1 Q. Let's skip down to the paragraph that's
2 directly above your contact information.
3 A. Okay.
4 Q. Second sentence of that paragraph says,
5 "For all those questions that deal with numbers and
6 detailed benefits, Bob refers them to EA John Howell
7 and so can you. John has graciously agreed to field
8 these difficult number questions and to serve as a
9 third party validation on the RaPower3 program."
10 Did I read that correctly?
11 A. Yes.
12 Q. So, Mr. Howell, did you field specific
13 questions, either from people referred by Bob Aulds
14 or others?
15 A. I did, but I didn't know that this was put
16 out. That might be why so many called.
17 Q. How many people called and asked?
18 A. Don't know.
19 Q. More than ten?
20 A. Yeah.
21 Q. More than 20?
22 A. Yes.
23 Q. More than 50?
24 A. Probably. Because it seemed like it went
25 crazy one year. I didn't know they'd put that out.

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1 Q. And of course your contact information
2 appears below.
3 A. Yes.
4 Q. Right? When people called, did you speak
5 with them about the RaPower3 program?
6 A. Depends on -- sometimes yes, sometimes no.
7 I mean, if I was busy, I'd say no. I didn't have
8 time, I'd just say go -- just tell them to go to
9 look at the website. And didn't get -- if they have
10 a specific question that's easy to answer, okay, but
11 if it's something detailed or on their tax return,
12 then I didn't have time to answer just lots and lots
13 of questions.
14 Q. You said sometimes you would talk to them
15 and sometimes you wouldn't. So if you did talk to
16 them, did you tell them about RaPower3 and what it
17 could do?
18 A. Well, they had already been told by Bob or
19 somebody else about it, and they just wanted to know
20 about the -- if I could do the taxes or if they
21 could do their taxes or usually generic questions
22 about it. I said, yeah, we can do your tax return
23 if you're not comfortable doing it or you can do it
24 yourself or whoever you use now can do it. I said
25 just go to the RaPower3 website and it tells them

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1 the generic information is all right there.
2 Q. Did you tell people about the tax benefits
3 associated with RaPower3?
4 A. If they asked specifically, I'd say, yeah,
5 you get the energy tax credits and/or depreciation,
6 depending on your tax situation.
7 Q. So it sounds like you may have ended up
8 with tax preparation customers as a result of these
9 phone calls.
10 A. Possibility, yes.
11 Q. Showing you what's been marked Plaintiff's
12 Exhibit 348. Please take a look at that and let me
13 know when you're done.
14 A. Okay.
15 Q. This is an e-mail from Greg Shepard,
16 correct?
17 A. Yes.
18 Q. Dated Saturday, November 9, 2013, right?
19 A. Yes.
20 Q. There's an attachment on the e-mail
21 entitled "IRS Business Activities (1).docx,"
22 correct?
23 A. Yeah, right out of the IRS's publication.
24 Q. Okay. Take a look, please, right above
25 Mr. Shepard's signature. It says, "Thanks to John

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1 Howell, our astute tax preparer from Texas. He sent
2 me the attached business document that should help
3 you in your audit or appeal." Did I read that
4 correctly?
5 A. Yes.
6 Q. And, in fact, did you send Mr. Shepard the
7 attachment that appears on page Gregg_P&R 3344?
8 A. Yes.
9 MS. HEALY GALLAGHER: Let's go off the
10 record, please.
11 (Recess from 3:43 to 4:03)
12 (Ms. Erin Hines left the deposition.)
13 MS. HEALY GALLAGHER: Back on the record,
14 please.
15 BY MS. HEALY GALLAGHER:
16 Q. Mr. Howell, we just took a quick break.
17 Did you speak with anybody about the facts of this
18 case on that break?
19 A. No.
20 Q. Are there any answers to the questions
21 that I've asked today that you would like to change
22 or amplify in any way?
23 A. No.
24 Q. Mr. Howell, when we were looking at the
25 RaPower3 invoices, you have to pay for the systems

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| <p style="text-align: right;">Page 185</p> <p>1 that you buy, right?</p> <p>2 A. Yes.</p> <p>3 Q. Who do you pay?</p> <p>4 A. RaPower.</p> <p>5 Q. And has that been true since 2011?</p> <p>6 A. Yes.</p> <p>7 Q. To present day?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have any understanding of the</p> <p>10 relationship between Greg Shepard and RaPower3?</p> <p>11 A. He's their operations manager as far as I</p> <p>12 know. Might be another title or something else, but</p> <p>13 that's all I've ever known.</p> <p>14 Q. Mr. Howell, we talked about folks from</p> <p>15 around the country who may have contacted you to</p> <p>16 prepare their tax returns through RaPower3. About</p> <p>17 how many people in the Wichita Falls area came to</p> <p>18 you for tax preparation because they were interested</p> <p>19 in RaPower3?</p> <p>20 A. I'd say 30.</p> <p>21 Q. Since 2011?</p> <p>22 A. Yeah, it'll go up and down, like I say. I</p> <p>23 mean, you take everybody that was '11, '12, '13,</p> <p>24 '14, '15, '16, there might have been 50 of them but</p> <p>25 some of those keep coming. Others might do one time</p> | <p style="text-align: right;">Page 187</p> <p>1 Q. When did they start coming to you for tax</p> <p>2 prep?</p> <p>3 A. Really don't recall exactly when.</p> <p>4 '12, '13, fourt -- no, it was about '12, '13, so a</p> <p>5 number of years. They were recommended by somebody</p> <p>6 else.</p> <p>7 Q. And this tax return is a 2014 tax return,</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. If you'd take a look at the signature</p> <p>11 lines on Howell_John 8290, the date says</p> <p>12 September 19, 2016. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Is that the result of an auto-update field</p> <p>15 for the date?</p> <p>16 A. Most likely.</p> <p>17 Q. So you would have prepared this 2014 tax</p> <p>18 return sometime in 2015, right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And just to close that loop, your</p> <p>21 name is in the paid preparer's signature line,</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. So you prepared this return?</p> <p>25 A. Yes.</p> |
| <p style="text-align: right;">Page 186</p> <p>1 and then never see them again. So, hard to say how</p> <p>2 many are exactly for RaPower.</p> <p>3 (Exhibit 598 marked)</p> <p>4 Q. Mr. Howell, you're being handed what's</p> <p>5 been marked Plaintiff's Exhibit 598. Please take a</p> <p>6 look at that. Plaintiff's Exhibit 598 is Bates</p> <p>7 marked Howell_John 8285 through 307, 8307.</p> <p>8 Please take a look at Plaintiff's</p> <p>9 Exhibit 598 and let me know when you are ready.</p> <p>10 A. Okay.</p> <p>11 Q. Okay. Let's take a look, please, at --</p> <p>12 well, first off, do you recognize Plaintiff's</p> <p>13 Exhibit 598?</p> <p>14 A. Yes.</p> <p>15 Q. What is it?</p> <p>16 A. It's a tax return for Charles and Tammy</p> <p>17 Knowing.</p> <p>18 Q. Knowing?</p> <p>19 A. Kowing.</p> <p>20 Q. Kowing. And the Kowings are in</p> <p>21 Burkburnett, Texas?</p> <p>22 A. Yes.</p> <p>23 Q. Have they been long-time customers of</p> <p>24 Howell Tax Service?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 188</p> <p>1 Q. Take a look, please, at the last page of</p> <p>2 Plaintiff's Exhibit 598.</p> <p>3 A. Okay.</p> <p>4 Q. Oh, actually real quick, does Plaintiff's</p> <p>5 Exhibit 598 appear to be a true and accurate copy of</p> <p>6 the Kowings' tax return for 2014?</p> <p>7 A. Yes.</p> <p>8 Q. Take a look, please, at the last page.</p> <p>9 It's a Form 4562 depreciation and amortization --</p> <p>10 A. Yes.</p> <p>11 Q. -- form, right? Take a look, please, at</p> <p>12 the box that says "Business or activity to which</p> <p>13 this form relates." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. It says "Schedule C Alternate Energy</p> <p>16 Systems." Did I --</p> <p>17 A. Yes.</p> <p>18 Q. -- read that correctly? Yes?</p> <p>19 A. Yes.</p> <p>20 Q. Does that indicate a business related to</p> <p>21 RaPower3?</p> <p>22 A. Yes.</p> <p>23 Q. Then in the description of property, line</p> <p>24 6A, it says 600-watt thermal solar lens, correct?</p> <p>25 A. Yes.</p> |

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| <p style="text-align: right;">Page 189</p> <p>1 Q. And in your mind does that mean the 2 system?</p> <p>3 A. The system.</p> <p>4 Q. The alternative energy system?</p> <p>5 A. Yes.</p> <p>6 Q. The cost in line 6B is \$92,225, correct?</p> <p>7 A. Mm-hmm.</p> <p>8 Q. Yes?</p> <p>9 A. Yes, it is.</p> <p>10 Q. And you entered that number, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Take a look, please, at the page marked 13 Howell_John 8292.</p> <p>14 A. Okay.</p> <p>15 Q. This is a Schedule C, correct?</p> <p>16 A. Yes.</p> <p>17 Q. The name of the proprietor is Charles 18 Kowing, right?</p> <p>19 A. Correct.</p> <p>20 Q. And then the principal business or 21 profession identified there is Alternate Energy 22 Systems, right?</p> <p>23 A. Correct.</p> <p>24 Q. And that is to indicate the -- a 25 connection to RaPower3?</p> | <p style="text-align: right;">Page 191</p> <p>1 They're the sole proprietorship. Nobody else is 2 involved in it other than themselves. They 3 purchased lenses. We probably asked them if they 4 had talked to anybody else about it or if they did 5 any promotion for their business or whatever.</p> <p>6 Q. Other than purchasing lenses -- I'll 7 withdraw that.</p> <p>8 Let's see. Did you keep track at all of 9 asking your customers questions about their material 10 participation in any business related to RaPower3?</p> <p>11 A. It would be in -- in the notes for their 12 particular tax return. Usually it's given back to 13 them in their customer file.</p> <p>14 Q. So you did keep track of asking people?</p> <p>15 A. Yeah, we would notate it, but it would be 16 in with their workpapers and everything.</p> <p>17 Q. Did you keep the documentation showing 18 that you had asked people about aspects of their 19 material participation in their business?</p> <p>20 A. Probably not.</p> <p>21 Q. Any reason why not?</p> <p>22 A. We usually just had a information sheet 23 that we asked them some questions, and it stayed 24 with their -- their papers that we gave back to 25 them. We have enough papers in our office without</p> |
| <p style="text-align: right;">Page 190</p> <p>1 A. Yes.</p> <p>2 Q. Mr. Howell, when you prepared Schedule Cs 3 for customers who had bought RaPower3 systems, was 4 it your typical practice to put Alternate Energy 5 Systems in line A --</p> <p>6 A. Yes.</p> <p>7 Q. -- of Schedule C?</p> <p>8 A. Yes, it was.</p> <p>9 Q. The business name in line C is blank. Do 10 you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Why is that blank?</p> <p>13 A. They're using their own name. "If no 14 separate business name, leave blank."</p> <p>15 Q. I see. Okay. All right. Line G asks, 16 "Did you materially participate in the operation of 17 this business during 2014?" Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. The box "Yes" is checked at the end of 20 that line. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Who checked that box?</p> <p>23 A. Probably -- I probably did.</p> <p>24 Q. Why did you check that box?</p> <p>25 A. Because they participated in the business.</p> | <p style="text-align: right;">Page 192</p> <p>1 adding more and more and more.</p> <p>2 Q. Did any of your tax return preparation 3 customers ask you what it took to qualify as a 4 material participant in any business?</p> <p>5 A. Probably some did. And I'd probably tell 6 them what the publication for businesses. Sometimes 7 I'd have a copy of it and give to them. Maybe it 8 was Publication 535 or something like that.</p> <p>9 Q. So, Mr. Howell, did you make sure that 10 your customers met material participation standards 11 before you checked yes in Box G?</p> <p>12 A. We tried to. And with the information 13 that was given to us, if they were operating their 14 business, did they have a separate checking account. 15 We normally had some questions that we asked them, 16 and that would have been given back to them in their 17 file.</p> <p>18 Q. Did you ask them how many hours they spent 19 in furtherance of their business related to 20 RaPower3?</p> <p>21 A. Typically in a sole proprietorship where 22 it's only them, your time, hours aren't really as 23 critical.</p> <p>24 Q. Did you ask?</p> <p>25 A. Typically we'd ask them did you spend some</p> |

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| <p style="text-align: right;">Page 193</p> <p>1 time doing your business, was it weekly, daily, 2 monthly. Some of them might have responded to one 3 of Greg's e-mails. Some of them said they talked to 4 people that they worked with, family members about 5 the benefits of it. 6 Q. Did you ever talk to any customers about 7 the difference between an investor in an activity 8 and someone who actually had a trade or business 9 with respect to that activity? 10 A. Typ -- if they asked about it. 11 Q. How would you explain that? 12 A. Well, an investor is like a person that 13 buys stocks, bonds, securities, but all they do is 14 they put in their money and then they are investing 15 in that particular thing. 16 And a person of business is actually going 17 to promote their business. They're going to expect 18 income from their business, do advertising for their 19 business. So there's just different guidelines that 20 we use on whether they're just an investor or they 21 are a business owner. 22 Q. Take a look, please, at Box 32A. Box 32A 23 has an "X" checked next to the statement "All 24 investment is at risk." 25 A. Mm-hmm.</p> | <p style="text-align: right;">Page 195</p> <p>1 Q. Can you show me where on the 4562? 2 A. At line 22. 3 Q. Okay. And we're on page Howell_John 8307. 4 A. Yes. 5 Q. And you entered the information on Form 6 4562, correct? 7 A. Yes. 8 Q. And then line 22 on Form 4562 carried over 9 to line 13 on the Schedule C. 10 A. Correct. 11 Q. Then line 31 on the Schedule C, does that 12 automatically appear on line 12 of the 1040? 13 A. Yes, it does. 14 Q. And, in fact, on page Howell_John 8289, 15 the first page of the 1040, we see that number on 16 line 12. 17 A. Correct. 18 Q. Let's take a look, please, at Form 3800, 19 which is at -- the page is marked 8295 through 8298. 20 Did you complete this Form 3800? 21 A. Yes. 22 Q. So where -- let's see. So then in part 3, 23 you checked that Box A that indicates this credit is 24 a general business credit from a non-passive 25 activity.</p> |
| <p style="text-align: right;">Page 194</p> <p>1 Q. How did you know that all of the money 2 that the Kowings had put into RaPower3 was at risk? 3 A. Because if they don't pay for their units 4 or meet up to their obligation, RaPower can take 5 them all back. 6 Q. So to your understanding, because the 7 system was collateral, that meant that the 8 Kowings' -- 9 A. Yes. 10 Q. -- money was all at risk? 11 A. Yes, because they represented the systems 12 themselves. And if they default on it, then the 13 systems are taken back. Like put a down payment on 14 a car, you don't pay your monthly payments, they 15 take your car back. 16 Q. Was there any other risk to the Kowings if 17 they didn't make their payments on the lenses? 18 A. Not that I'm aware of. 19 Q. Take a look, please, at the depreciation, 20 line 13. It says \$96,715. Do you see that? 21 A. Yes. 22 Q. You entered that number on the line for 23 depreciation, correct? 24 A. It'll be carried directly over from the 25 4562.</p> | <p style="text-align: right;">Page 196</p> <p>1 A. Yes. 2 Q. Where, if at all, are the credits related 3 to any systems purchased for the Kowings on this 4 Form 3800? 5 A. It's a carryover from Form 3468. 6 Q. Which is on what page? 7 A. 8305, line 12B. 8 Q. Thank you. All right. So Form 3468 is 9 the form for the investment credit, correct? 10 A. Correct. 11 Q. And line 12B has \$108,500 entered into it, 12 correct? 13 A. Correct. 14 Q. You entered that number? 15 A. Correct. 16 Q. And then your tax preparation program does 17 the rest? 18 A. It calculates the proper percentage. 19 Q. Is that process consistent with how you 20 prepared people's RaPower3 tax returns? 21 A. Typically, yes. 22 Q. You can put that aside. 23 (Exhibit 599 marked) 24 Take a look, please, at what's been handed 25 to you marked Plaintiff's Exhibit 599, Bates numbers</p> |

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| <p style="text-align: right;">Page 197</p> <p>1 US046188 through 46232.</p> <p>2 A. Okay.</p> <p>3 Q. Are James and Jo Ann Woodson customers of</p> <p>4 yours?</p> <p>5 A. Yes.</p> <p>6 Q. Well, let's just start with this.</p> <p>7 Plaintiff's Exhibit 599 is a printout of a Form 1040</p> <p>8 for James and Jo Ann Woodson, correct?</p> <p>9 A. Yes.</p> <p>10 Q. You prepared this return?</p> <p>11 A. I believe so.</p> <p>12 Q. Any reason to think you didn't?</p> <p>13 A. It's just in a different format than we</p> <p>14 typically do.</p> <p>15 Q. Sure. But your name is in the</p> <p>16 preparer's --</p> <p>17 A. Yes.</p> <p>18 Q. -- box, correct?</p> <p>19 A. Yes, it is.</p> <p>20 Q. And your firm's EIN appears there as well?</p> <p>21 A. Yes, it does.</p> <p>22 Q. And your PTIN appears in that box as well.</p> <p>23 A. Yes, it does.</p> <p>24 Q. James and Jo Ann Woodson live in Powhatan,</p> <p>25 Virginia. Do you see that?</p> | <p style="text-align: right;">Page 199</p> <p>1 business or profession, that information would have</p> <p>2 automatically populated for 2013?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Nonetheless, to your knowledge,</p> <p>5 this Schedule C has to do with RaPower3?</p> <p>6 A. Correct.</p> <p>7 Q. Mr. Howell, when you first started</p> <p>8 preparing returns with RaPower3, for RaPower3</p> <p>9 customers, I should say, did you always separate out</p> <p>10 RaPower3 as a separate Schedule C?</p> <p>11 A. Typically we did.</p> <p>12 Q. So like, for example, if someone already</p> <p>13 had a Schedule C, would you create a second Schedule</p> <p>14 C for RaPower3?</p> <p>15 A. We tried to if it was in a -- most of the</p> <p>16 time we tried to make it a separate Schedule C.</p> <p>17 Q. So Mike Penn testified that you did not do</p> <p>18 that with his return in the first instance.</p> <p>19 A. Possibility we didn't.</p> <p>20 Q. And it's possible that that happened with</p> <p>21 other people as well?</p> <p>22 A. It could have. It depends on how many</p> <p>23 Schedule Cs they have. They have three or four or</p> <p>24 five, you know, you're just getting so many</p> <p>25 different ones in their tax return. And typically</p> |
| <p style="text-align: right;">Page 198</p> <p>1 A. Yes.</p> <p>2 Q. Did they come to you through RaPower3?</p> <p>3 A. Yes.</p> <p>4 Q. Take a look, please, at the page that's</p> <p>5 marked 46217. This is the Wood -- or James</p> <p>6 Woodson's Schedule C, correct?</p> <p>7 A. Yes.</p> <p>8 Q. I'm curious because the -- in line A the</p> <p>9 principal business or profession is Solar Energy</p> <p>10 here. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Was it your practice to -- I'm sorry.</p> <p>13 Well, I'll ask the question. Was it your practice</p> <p>14 to put Solar Energy down when there was a Schedule C</p> <p>15 related to RaPower3?</p> <p>16 A. No. He could have had a prior year which</p> <p>17 he most likely did, and we would have typically put</p> <p>18 it in to get the historical data from it and then</p> <p>19 automatically transferred over to the 2013. So that</p> <p>20 would have transferred over what he had had in a</p> <p>21 previous year.</p> <p>22 Q. Okay. So let me make sure I understand</p> <p>23 and it's clear for the record here. So if James</p> <p>24 Woodson had filed a 2012 Schedule C and the 2012</p> <p>25 Schedule C had Solar Energy as the principal</p> | <p style="text-align: right;">Page 200</p> <p>1 when IRS looks at them, they -- after your third</p> <p>2 one, it's just going to group everything together</p> <p>3 anyways.</p> <p>4 But we tried to separate it out so we</p> <p>5 would know the depreciation assigned to RaPower3.</p> <p>6 If they had any income from it, we associated with</p> <p>7 that. Like on the Woodsons, he did have some</p> <p>8 commissions that were generated through his</p> <p>9 RaPower3, so they were put on his Schedule C. And</p> <p>10 his wife had a separate Schedule C.</p> <p>11 Q. Other tax return preparers at Howell Tax</p> <p>12 Service prepared tax returns with RaPower3</p> <p>13 customers, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Who were the people who prepared those</p> <p>16 returns?</p> <p>17 A. It was usually my brother, Daniel.</p> <p>18 Q. Anyone else?</p> <p>19 A. My father and mother probably did some in</p> <p>20 2011, 2012, possibly 2013.</p> <p>21 Q. Mr. Howell, are you familiar with</p> <p>22 something that we've been calling in this suit the</p> <p>23 Anderson letter?</p> <p>24 A. I believe that is what RaPower had posted</p> <p>25 on their website. There was two attorney letters.</p> |

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| <p style="text-align: right;">Page 201</p> <p>1 Anderson letter I think was one, and another law 2 firm had another one.</p> <p>3 Q. Kirton McConkie ring a bell?</p> <p>4 A. That one, then I think there was also a 5 third one.</p> <p>6 Q. Okay. I'm going to show you what's 7 previously been marked Plaintiff's Exhibit 23. Do 8 you recognize Plaintiff's Exhibit 23 as the Anderson 9 letter that was on the website?</p> <p>10 A. Yes.</p> <p>11 Q. Did you review the Anderson letter when 12 you were -- at any time?</p> <p>13 A. Yes.</p> <p>14 Q. What, if anything, did you do with the 15 Anderson letter?</p> <p>16 A. Probably looked at it, then I looked up 17 the different IRS code sections, IRC 48, the QPEP, 18 so -- and used that to do some research into what 19 they actually had in their -- in their letter.</p> <p>20 Q. Would it surprise you to learn, 21 Mr. Howell, that Todd Anderson testified not long 22 ago that Plaintiff's Exhibit 23, the Anderson 23 letter, was a draft and not a finished product?</p> <p>24 A. I'm not aware of any of that.</p> <p>25 Q. Would it surprise you to learn that</p> | <p style="text-align: right;">Page 203</p> <p>1 Q. Plaintiff's 582 is an e-mail, appears to 2 be an e-mail from Jessica Anderson to Todd Anderson. 3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And it's dated June 7, 2011. Do you see 6 that?</p> <p>7 A. Yes.</p> <p>8 Q. In the last paragraph of the e-mail, it 9 says, "It has always been my belief that your 10 customers who purchase the solar equipment and then 11 turn over the operation of the power generating to a 12 third party are not active participants, such that 13 the income from the business would not be active 14 income. I have been unable to find a way around it, 15 and in general my advice and counsel tends to be on 16 the conservative side anyway. I understand you 17 believe that there is a way to draft the contract 18 between the equipment owner and the third party 19 manager in such a way that the income and/or losses 20 will be active. I do not believe that is something 21 I can accomplish for you and would recommend that 22 you seek an attorney that is more familiar and has a 23 greater knowledge in this area than I do."</p> <p>24 Did I read that correctly?</p> <p>25 A. Yes.</p> |
| <p style="text-align: right;">Page 202</p> <p>1 Mr. Anderson testified that Plaintiff's Exhibit 23 2 was an attempt to elicit more information from 3 RaPower3 because his firm did not feel like they had 4 enough facts to actually opine on the transaction?</p> <p>5 A. I have no knowledge of any of that.</p> <p>6 Q. Does that cause you any concern as an 7 enrolled agent? Mr. Howell?</p> <p>8 A. No, because I've done some of the -- I've 9 gotten -- looked at all of the information that they 10 have and did my own research into the different 11 regulations.</p> <p>12 Q. Did you know, Mr. Howell, that Jessica 13 Anderson, Todd Anderson's wife, is the actual author 14 of the Anderson letter?</p> <p>15 A. No.</p> <p>16 Q. Okay. I'm going to hand you what's been 17 marked Plaintiff's Exhibit 582. Please read that to 18 yourself and let me know when you're done.</p> <p>19 Are you done?</p> <p>20 A. Yes.</p> <p>21 Q. I'd like you to let me know so that I can 22 know when it's okay to ask questions.</p> <p>23 All right, Mr. Howell, have you ever seen 24 Plaintiff's Exhibit 582 before?</p> <p>25 A. No.</p> | <p style="text-align: right;">Page 204</p> <p>1 Q. The name under that is Jessica Anderson of 2 Anderson Law Center, P.C.</p> <p>3 A. Yes.</p> <p>4 Q. Right? Does anything about this paragraph 5 generate any sort of concern for you about any 6 reliance on the Anderson letter in Plaintiff's 7 Exhibit 23?</p> <p>8 A. One thing is the Anderson letter is on 9 August 8 of 2012. This was from June 7th of 2011.</p> <p>10 Q. So, Mr. Howell, I'm going to show you -- 11 first I want you to take a look at the last page of 12 Plaintiff's Exhibit 23. That's an e-mail, correct?</p> <p>13 A. Yes.</p> <p>14 Q. From Todd Anderson to neldon@iaus.com, 15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. That e-mail's dated November 15, 2010, 18 right?</p> <p>19 A. Correct.</p> <p>20 Q. I'll represent to you that Todd Anderson 21 testified that the 2012 date in the Anderson letter 22 is an auto-update feature, much like the one on your 23 tax returns.</p> <p>24 A. Okay.</p> <p>25 Q. That in fact this was written in 2010.</p> |

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| <p style="text-align: right;">Page 205</p> <p>1 A. Okay.</p> <p>2 Q. If you like, I can show you your document</p> <p>3 that has a 2010 date.</p> <p>4 A. That's fine.</p> <p>5 Q. No, we're good? Okay.</p> <p>6 A. We're good.</p> <p>7 Q. So back to my original question. Does the</p> <p>8 last paragraph of Plaintiff's Exhibit 582 cause you</p> <p>9 any concern as an enrolled agent? Mr. Howell?</p> <p>10 A. Maybe some, but they point out that they</p> <p>11 recommend that they find somebody that's more</p> <p>12 familiar with that type of industry too.</p> <p>13 Q. What's your concern, sir?</p> <p>14 A. I'm not sure if there -- there really is</p> <p>15 that much of a concern.</p> <p>16 Q. What concern is there?</p> <p>17 A. Well, this is just what they are bringing</p> <p>18 out, saying that what their beliefs were. So that's</p> <p>19 just their opinion.</p> <p>20 Q. What I'm asking you, Mr. Howell, is what</p> <p>21 your concern is.</p> <p>22 A. I don't really have a concern.</p> <p>23 Q. Because you testified you had some</p> <p>24 concern.</p> <p>25 A. Not enough to really say no when I've</p> | <p style="text-align: right;">Page 207</p> <p>1 Q. After reading Plaintiff's 480, do you have</p> <p>2 any concerns about the Anderson letter?</p> <p>3 A. No.</p> <p>4 Q. Handing you what's been marked Plaintiff's</p> <p>5 Exhibit 18, one eight. Mr. Howell, I'd just like</p> <p>6 you to take a look at this. You don't have to read</p> <p>7 the whole thing. But let me know, do you recognize</p> <p>8 Plaintiff's Exhibit 18?</p> <p>9 A. I don't believe I've seen this particular</p> <p>10 one.</p> <p>11 Q. Are you familiar --</p> <p>12 A. This is to SOLCO I, LLC. I'm not positive</p> <p>13 if that's the same one I saw on their website. It</p> <p>14 could be. I just don't recall like that.</p> <p>15 (Exhibit 600 marked)</p> <p>16 Q. Would you take a look, please, at what's</p> <p>17 been marked Plaintiff's Exhibit 600. For the</p> <p>18 record, that is Howell_John 3158 through 3170.</p> <p>19 Mr. Howell, do you recognize Plaintiff's</p> <p>20 Exhibit 600?</p> <p>21 A. I don't really remember this.</p> <p>22 Q. Mr. Howell, you produced this document to</p> <p>23 the United States.</p> <p>24 A. If I did, I do not remember that. I do</p> <p>25 not remember this document.</p> |
| <p style="text-align: right;">Page 206</p> <p>1 answered yes.</p> <p>2 Q. What I'm asking you for is what your</p> <p>3 concern is.</p> <p>4 A. I don't have a concern. How is that?</p> <p>5 Q. Now you have no concern about it?</p> <p>6 A. No concern.</p> <p>7 Q. So you had some concern approximately two</p> <p>8 minutes ago, now you have no concern.</p> <p>9 A. No concern.</p> <p>10 Q. What was your concern two minutes ago?</p> <p>11 A. No concern. I was just reading based on</p> <p>12 what they had written, and then they bring out that</p> <p>13 they might not be -- have expertise in that area.</p> <p>14 Q. Nonetheless, Mr. Howell, RaPower3 has been</p> <p>15 promoting this Anderson letter on its website.</p> <p>16 A. That is true. Yes, they have.</p> <p>17 Q. Showing you what's been marked Plaintiff's</p> <p>18 Exhibit 480. Please take a look at that and let me</p> <p>19 know when you're done.</p> <p>20 Are you done?</p> <p>21 A. No. Okay.</p> <p>22 Q. Okay. Plaintiff's Exhibit 480 appears to</p> <p>23 be a letter from Tate Bennett to Neldon Johnson and</p> <p>24 RaPower3. Do you see that?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 208</p> <p>1 Q. Do you have any recollection of where you</p> <p>2 might have gotten Plaintiff's Exhibit 600?</p> <p>3 Mr. Howell?</p> <p>4 A. I'm -- I don't recall this document at</p> <p>5 all. I'm not sure where it came from.</p> <p>6 Q. Okay. For the record, the date on</p> <p>7 Plaintiff's Exhibit 600 is October 5th, 2012. The</p> <p>8 Re line is "Opinion of counsel on matters pertaining</p> <p>9 to purchase of solar lenses."</p> <p>10 Okay. I'm handing you what has been</p> <p>11 marked Plaintiff's Exhibit -- I'm sorry. I'll ask</p> <p>12 you first real quick -- you can put that to the</p> <p>13 side, Mr. Howell.</p> <p>14 You testified earlier, though, that you</p> <p>15 did recall a memorandum from Kirton McConkie on</p> <p>16 RaPower3's website, right?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember reading that memorandum?</p> <p>19 A. I believe I did.</p> <p>20 Q. Did you do anything with the information</p> <p>21 in that memorandum?</p> <p>22 A. I probably used it in tax audits or</p> <p>23 something.</p> <p>24 Q. Did you ever ask anyone -- well, let me</p> <p>25 back up.</p> |

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| <p style="text-align: right;">Page 209</p> <p>1 Did you have an understanding of the</p> <p>2 author of the Kirton McConkie memorandum, who that</p> <p>3 was?</p> <p>4 A. I believe it was one of the attorneys</p> <p>5 there in their law firm.</p> <p>6 Q. Did you ever ask anyone where the author</p> <p>7 of the memorandum got his facts that he stated in</p> <p>8 the memo?</p> <p>9 A. No.</p> <p>10 Q. I'm going to hand you what's been marked</p> <p>11 Plaintiff's Exhibit 370. And I would just like you</p> <p>12 to read the first two pages. I mean, you can take a</p> <p>13 look at the whole thing, but I'm going to ask you</p> <p>14 questions about the first two pages.</p> <p>15 Are you finished?</p> <p>16 A. No. Okay.</p> <p>17 Q. Mr. Howell, did you ever hear about Kirton</p> <p>18 McConkie rescinding its memorandum?</p> <p>19 A. No.</p> <p>20 Q. No one ever mentioned that to you?</p> <p>21 A. No.</p> <p>22 Q. Not Greg Shepard, not the IRS?</p> <p>23 A. No.</p> <p>24 Q. Based on the first page, first couple</p> <p>25 pages of Plaintiff's Exhibit 370, does this letter</p> | <p style="text-align: right;">Page 211</p> <p>1 were they organized?</p> <p>2 A. I don't know if we have any partnerships</p> <p>3 that do it because most of them are sole</p> <p>4 proprietorships. Might have been an S corp., couple</p> <p>5 S corps, but 99.8 percent would have been sole</p> <p>6 proprietorships.</p> <p>7 Q. Okay. So of the -- of the RaPower3</p> <p>8 customers whose tax returns you have prepared since</p> <p>9 2011, 99 percent are sole proprietorships?</p> <p>10 A. Yes.</p> <p>11 Q. We've spoken a few times, Mr. Howell,</p> <p>12 about audits and appeals with the IRS with respect</p> <p>13 to RaPower3 customers. When did you first learn</p> <p>14 that the IRS was auditing RaPower3 customers?</p> <p>15 A. 2013.</p> <p>16 Q. How did you learn about that?</p> <p>17 A. Clients saying they're being audited.</p> <p>18 Q. Your own clients?</p> <p>19 A. Some my own, some clients from other</p> <p>20 areas.</p> <p>21 Q. And when you say clients, do you mean that</p> <p>22 they either were or became clients of yours or that</p> <p>23 they were RaPower3 clients?</p> <p>24 A. Some were just RaPower3 clients. I just</p> <p>25 did the audit for them.</p> |
| <p style="text-align: right;">Page 210</p> <p>1 raise any concerns for you about the RaPower3</p> <p>2 program?</p> <p>3 A. No, because they were pointing out that,</p> <p>4 hey, we wrote that specifically for C corporations.</p> <p>5 If you want it for a different entity, then we'll</p> <p>6 need to give you a different memorandum for that,</p> <p>7 but this particular one is for C corporations.</p> <p>8 So I don't know if they asked for one.</p> <p>9 That would be for sole proprietorships, LLCs,</p> <p>10 S corps, partnerships and such. So this just says,</p> <p>11 hey, this was designed, this was -- we wrote this</p> <p>12 for C corporations only.</p> <p>13 Q. And to your knowledge, Mr. Howell, did you</p> <p>14 prepare any tax returns with RaPower3 tax benefits</p> <p>15 on C corp. tax returns?</p> <p>16 A. I think some -- one we did, but he passed</p> <p>17 away and so the corporation, I believe, was</p> <p>18 dissolved.</p> <p>19 Q. So then of your tax return preparation</p> <p>20 customers who claimed tax benefits through RaPower3,</p> <p>21 how were they organized?</p> <p>22 A. Most of them were Schedule Cs.</p> <p>23 Q. So sole proprietors?</p> <p>24 A. Yes.</p> <p>25 Q. If they were not sole proprietors, how</p> | <p style="text-align: right;">Page 212</p> <p>1 Q. About how many people have you represented</p> <p>2 before the IRS whose RaPower3 tax benefits were</p> <p>3 being examined?</p> <p>4 A. I don't recall really how many. There was</p> <p>5 quite a few in -- few in '13. I think most of them</p> <p>6 were in '14. Could be 50.</p> <p>7 Q. And is that just at the examination stage</p> <p>8 or also on appeal you're talking about?</p> <p>9 A. Yeah, all the ones that went through</p> <p>10 examinations we did appeals on.</p> <p>11 Q. Of those 50 people, about how many were</p> <p>12 people whose returns you had prepared versus people</p> <p>13 whose returns you had not prepared?</p> <p>14 A. Probably 90 percent.</p> <p>15 Q. 90 percent were what?</p> <p>16 A. Of the -- were my clients. Some -- there</p> <p>17 was a handful of them that were just -- either did</p> <p>18 it their own self or couldn't get their tax preparer</p> <p>19 to help them with their audit.</p> <p>20 Q. Okay. So of the approximately 50 people</p> <p>21 you represented before the IRS, either an audit or</p> <p>22 appeal, 90 percent of those people had you prepare</p> <p>23 their tax returns that were being examined?</p> <p>24 A. Yes.</p> <p>25 Q. Since the examinations started, have you</p> |

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1 warned any of your tax prep customers who take
 2 RaPower3 benefits that they might be audited?
 3 A. Yes.
 4 Q. What do you say to them?
 5 A. I just tell them it's a chance you could
 6 be audited by using the solar lenses.
 7 Q. Do they ask you why?
 8 A. Some do, some don't.
 9 Q. What do you tell them?
 10 A. Well, I just tell them that it's -- IRS is
 11 looking at it, there's been no definite tax court
 12 resolve on whether it's right or wrong, but that IRS
 13 is looking at them and that there's -- that I know
 14 of about 150 sitting in tax court.
 15 Q. Do you tell them that they would have to
 16 repay or they would have to actually pay the tax
 17 that they would owe?
 18 A. Yes.
 19 Q. With interest?
 20 A. Yes.
 21 Q. Do you tell them that they may be tagged
 22 with penalties?
 23 A. Yes.
 24 Q. Who, Mr. Howell, has paid you for the work
 25 you've done for the 50 customers in audit and

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1 appeal?
 2 A. Nobody.
 3 Q. You have not been paid for that work?
 4 A. No.
 5 Q. Any reason why not?
 6 A. I don't charge them for it. It's not
 7 their fault. No, I take that back. There was one I
 8 did. He was from out of town, the only one I ever
 9 charged.
 10 Q. Who was that?
 11 A. I don't even remember his name. I'd have
 12 to look it up. But most of them I didn't because
 13 told them it's not your fault you're being audited
 14 on that particular issue, so --
 15 Q. Whose fault is it?
 16 A. It would apparently go back to RaPowers.
 17 But then there's been no definite decision on one
 18 way or the other.
 19 Q. Anyone's fault other than RaPower?
 20 A. Each individual's responsible for their
 21 own tax return, so it falls on the individuals also.
 22 Q. Do you hold any responsibility if you
 23 prepared their taxes?
 24 A. If I prepared it, yes.
 25 Q. Do you tell them that?

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1 A. Yes, I do.
 2 Q. Have you offered to make anyone whole who
 3 has to pay the IRS?
 4 A. So far nobody's had to pay IRS.
 5 Q. And if they do?
 6 A. Then we'll talk about that when it
 7 happens. Then we'll look at offering compromises
 8 and everything else too at the same time.
 9 Q. You think if the IRS has to litigate all
 10 the way to tax court there's going to be the option
 11 for offering compromise?
 12 A. Don't know. I've seen some squirrely
 13 things happen, so --
 14 (Exhibit 601 marked)
 15 Q. Mr. Howell, handing you what's been marked
 16 Plaintiff's Exhibit 601 which is Bates marked
 17 BT_000285. Do you recognize Plaintiff's
 18 Exhibit 601?
 19 A. Yes.
 20 Q. What is it?
 21 A. It was an e-mail from Greg Shepard from
 22 (sic) William Coates.
 23 Q. And it's a chain of e-mails, right?
 24 A. Yes.
 25 Q. The topic of the e-mail is "Ra3 Audit,"

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1 yes?
 2 A. Yes.
 3 Q. These e-mails are dated in June 2014. Do
 4 you think that's about when you received these
 5 e-mails?
 6 A. Yes.
 7 Q. And I'll also note for the record you are
 8 cc'd on these e-mails, correct?
 9 A. Yes.
 10 Q. And in fact, you got these?
 11 A. Yes.
 12 Q. Does Plaintiff's Exhibit 601 appear to be
 13 a true and accurate copy of the e-mails between Greg
 14 Shepard and Bill Coates?
 15 A. Yes.
 16 (Exhibit 602 marked)
 17 Q. Handing you, Mr. Howell, what's been
 18 marked as Plaintiff's Exhibit 602, Bates marked
 19 Gregg_P&R 2698 through 99. Please take a look at
 20 that and let me know when you're done.
 21 A. Okay.
 22 Q. Do you recognize Plaintiff's Exhibit 602?
 23 A. I believe I've seen it. It was a mass
 24 e-mail.
 25 Q. The e-mail is from Greg Shepard, correct?

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| <p style="text-align: right;">Page 217</p> <p>1 A. Yes.</p> <p>2 Q. Dated December 21, 2013, right?</p> <p>3 A. Yes.</p> <p>4 Q. And your e-mail address, rockingham@ --</p> <p>5 A. Yes.</p> <p>6 Q. -- wf.net is in about the middle of the</p> <p>7 address list, right?</p> <p>8 A. Yes, it is.</p> <p>9 Q. And in fact, you received this e-mail from</p> <p>10 Mr. Shepard?</p> <p>11 A. I believe so.</p> <p>12 Q. Okay. Does Plaintiff's Exhibit 602 appear</p> <p>13 to be a true and correct copy of the e-mail from</p> <p>14 Mr. Shepard?</p> <p>15 A. Yes.</p> <p>16 Q. Mr. Howell, in the course of representing</p> <p>17 folks before the IRS, did you get any help or</p> <p>18 assistance from Mr. Shepard?</p> <p>19 A. No.</p> <p>20 Q. Did you talk with him at all about the</p> <p>21 status of the audits or how things were going?</p> <p>22 A. I might have if there was particular ones</p> <p>23 that had told him that they were being audited or</p> <p>24 something. He might have asked about them and --</p> <p>25 Q. Did you use any information from</p> | <p style="text-align: right;">Page 219</p> <p>1 A. That came from an e-mail from Greg</p> <p>2 Shepard.</p> <p>3 Q. So --</p> <p>4 A. It was an attachment.</p> <p>5 Q. So you didn't write this?</p> <p>6 A. No, no.</p> <p>7 Q. Did you ever respond to an IDR in helping</p> <p>8 a client with an audit?</p> <p>9 A. Probably, a number of them.</p> <p>10 Q. Did you use the information in Plaintiff's</p> <p>11 Exhibit 603 to help you respond to that IDR?</p> <p>12 A. Not that I recall. Not typically</p> <p>13 something I would use.</p> <p>14 Q. Why do you say that?</p> <p>15 A. Because if it was something in there, it</p> <p>16 got put in there by accident. I typically don't</p> <p>17 print out stuff that Greg Shepard puts like this to</p> <p>18 use that. I usually put in my own document.</p> <p>19 Q. So if you were to respond to an IDR for a</p> <p>20 client, you would write the response?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You wouldn't necessarily use what</p> <p>23 Greg Shepard --</p> <p>24 A. No.</p> <p>25 Q. -- wrote? Okay.</p> |
| <p style="text-align: right;">Page 218</p> <p>1 Mr. Shepard to help you represent people before the</p> <p>2 IRS?</p> <p>3 A. Typically, no. I don't know of anything I</p> <p>4 would use.</p> <p>5 (Exhibit 603 marked)</p> <p>6 Q. Handing you, Mr. Howell, what's been</p> <p>7 marked as Plaintiff's Exhibit 603. For the record,</p> <p>8 it's Bates marked Howell_John 2611 through 2613.</p> <p>9 Take a look at that, please, and let me know when</p> <p>10 you are done.</p> <p>11 A. Okay.</p> <p>12 Q. Do you recognize Plaintiff's Exhibit 603?</p> <p>13 A. I've seen it somewhere. It was probably</p> <p>14 in just some general information I had put in when</p> <p>15 IRS was requesting a bunch of documents from me. I</p> <p>16 don't -- probably didn't ever use it in any</p> <p>17 particular audits or anything. This was just some</p> <p>18 general information on an e-mail that was sent out</p> <p>19 to everybody.</p> <p>20 Q. All right. So take it a little bit slowly</p> <p>21 real quick. Plaintiff's Exhibit 603 is called</p> <p>22 Form 4564 Part 2 Information Document Request. Do</p> <p>23 you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Where did you get Plaintiff's Exhibit 603?</p> | <p style="text-align: right;">Page 220</p> <p>1 Nonetheless, does Plaintiff's Exhibit 603</p> <p>2 appear to be a true and accurate copy of a document</p> <p>3 you received from Greg Shepard?</p> <p>4 A. Yes.</p> <p>5 (Exhibit 604 marked)</p> <p>6 Q. Mr. Howell, you've been handed what's been</p> <p>7 marked Plaintiff's Exhibit 604, Bates marked</p> <p>8 Howell_John 347. Please take a look at that and let</p> <p>9 me know when you're done.</p> <p>10 A. Okay.</p> <p>11 Q. Mr. Howell, do you recognize Plaintiff's</p> <p>12 Exhibit 604?</p> <p>13 A. Yes.</p> <p>14 Q. What is it?</p> <p>15 A. It's a letter to Bob Aulds.</p> <p>16 Q. Did you write this letter to Bob Aulds?</p> <p>17 A. I believe I did.</p> <p>18 Q. Actually if we take a look at the top, the</p> <p>19 letterhead at the top of the page, is that your</p> <p>20 letterhead?</p> <p>21 A. Yes, it is.</p> <p>22 Q. For Howell Tax Service?</p> <p>23 A. Yes, it is.</p> <p>24 Q. The date at the top is June 20th, 2013.</p> <p>25 Do you see that?</p> |

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| <p style="text-align: right;">Page 221</p> <p>1 A. Yes.</p> <p>2 Q. Do you believe you wrote Plaintiff's</p> <p>3 Exhibit 604 on or about that date?</p> <p>4 A. Yes.</p> <p>5 Q. And, Mr. Howell, if we take a look at the</p> <p>6 signature block at the bottom, is that a typical</p> <p>7 signature block for you?</p> <p>8 A. Yes.</p> <p>9 Q. And in fact, did you send this letter to</p> <p>10 Bob Aulds?</p> <p>11 A. I probably did. This one isn't signed. I</p> <p>12 typically sign them, so it could have been just a</p> <p>13 draft that I was doing and gave to him. He might</p> <p>14 have been in my office and I gave it to him without</p> <p>15 signing it.</p> <p>16 (Exhibit 605 marked)</p> <p>17 Q. Showing you, Mr. Howell, what's been</p> <p>18 marked Plaintiff's Exhibit 605, Bates number</p> <p>19 Howell_John 348 through 350. Take a look at that,</p> <p>20 please, and let me know when you're done.</p> <p>21 A. Okay.</p> <p>22 Q. Do you recognize Plaintiff's Exhibit 605?</p> <p>23 A. Yes.</p> <p>24 Q. What is it?</p> <p>25 A. It was a letter I had sent to Mr. Miller.</p> | <p style="text-align: right;">Page 223</p> <p>1 A. RaPower said that they had a special</p> <p>2 witness that they would utilize in appeals if it was</p> <p>3 necessary.</p> <p>4 Q. Who was that?</p> <p>5 A. I don't know who it was.</p> <p>6 Q. Did you ask?</p> <p>7 A. I'm sure I did. They might have given me</p> <p>8 a name. I just -- I don't recall what it was or</p> <p>9 anything.</p> <p>10 Q. Okay. So that's the testimony. What's</p> <p>11 the additional evidence?</p> <p>12 A. Well, the additional evidence is going to</p> <p>13 come from the expert testimony on that the RaPower</p> <p>14 process does work, that the solar towers can produce</p> <p>15 electricity.</p> <p>16 Q. So your understanding was that the special</p> <p>17 witness was going to talk about the technology?</p> <p>18 A. Right.</p> <p>19 Q. Okay. Was there anything else regarding</p> <p>20 additional evidence that you would -- were offering</p> <p>21 to put forth at appeals?</p> <p>22 A. No.</p> <p>23 Q. Okay. So if RaPower3 had a special</p> <p>24 witness that the technology worked, why were they</p> <p>25 holding it back until appeals?</p> |
| <p style="text-align: right;">Page 222</p> <p>1 Q. And Mr. Miller is at the IRS?</p> <p>2 A. With the IRS, yes.</p> <p>3 Q. The date at the top is July 17, 2013. Do</p> <p>4 you see that?</p> <p>5 A. Correct.</p> <p>6 Q. Do you believe you sent this letter on or</p> <p>7 about that date?</p> <p>8 A. Yes.</p> <p>9 Q. And this letter is with respect to the</p> <p>10 Aulds' audit of their 1040 for 2010 and 2011,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. That audit had to do at least in part with</p> <p>14 the tax benefits from RaPower3, correct?</p> <p>15 A. Yes.</p> <p>16 Q. All right. So on pages 1 and 2, you sort</p> <p>17 of -- you state in general terms what the -- what</p> <p>18 the objections are to the disallowance, right?</p> <p>19 A. Yes.</p> <p>20 Q. And then you say -- it's like the third to</p> <p>21 last paragraph -- "If the information contained in</p> <p>22 all correspondence is not enough support, the</p> <p>23 taxpayers can provide additional evidence and expert</p> <p>24 testimony from special witnesses upon appeal."</p> <p>25 What evidence and testimony was that?</p> | <p style="text-align: right;">Page 224</p> <p>1 A. Well, because the auditor's already</p> <p>2 determined that they were going to deny everything</p> <p>3 to begin with regardless of what we said.</p> <p>4 Q. So why wouldn't that special witness</p> <p>5 provide this testimony during the audit?</p> <p>6 A. Well, because the auditor had already been</p> <p>7 told to deny everything, so you're not going to</p> <p>8 change their mind.</p> <p>9 Q. So, Mr. Howell, RaPower3 told you that it</p> <p>10 had someone who could prove that the technology</p> <p>11 worked?</p> <p>12 A. Well, yes.</p> <p>13 Q. And you didn't want to get that in front</p> <p>14 of the IRS?</p> <p>15 A. Not in front of Mr. Miller because he had</p> <p>16 already made his determination. This was just to</p> <p>17 send it to appeals. He had already determined what</p> <p>18 he was going to do.</p> <p>19 Q. So when did you find --</p> <p>20 A. And this letter was sent to the -- for the</p> <p>21 appeals.</p> <p>22 Q. When did you find out about the existence</p> <p>23 of this special witness?</p> <p>24 A. I don't know exactly when or what time</p> <p>25 frame. I'm sure --</p> |

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1 Q. Well, it would have been before July 2013,
 2 right?
 3 A. Yes, yes, it probably -- it probably was.
 4 Q. Now, Mr. Howell, the burden of proving
 5 entitlement to a particular tax treatment is on the
 6 taxpayer, isn't it?
 7 A. Correct.
 8 Q. Okay. So why wouldn't you put forth all
 9 evidence, including that special witness?
 10 A. When they've already determined the
 11 outcome of it, it had already been determined.
 12 Q. Have you asked about the special witness
 13 since?
 14 A. Not in particular. I do know they had a
 15 meeting with the IRS, RaPower, counsels with IRS,
 16 RaPower attorneys sometime early in this year and
 17 they talked to some expert witnesses at that time
 18 and that's when the IRS counsel said there would be
 19 no tax court hearings in 2017.
 20 Q. Do you know whose expert witness they were
 21 talking to?
 22 A. I don't know.
 23 Q. Was it RaPower-3's --
 24 A. They just came --
 25 Q. Excuse me. Was it RaPower3's expert

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1 witness?
 2 A. No, this was supposedly an expert witness
 3 that the IRS had.
 4 Q. Okay. So that person was not offering
 5 testimony from RaPower3, right?
 6 A. No.
 7 Q. Okay. So who is RaPower3's special
 8 witness?
 9 A. That I don't know if they were there then
 10 too or not.
 11 (Exhibit 606 marked)
 12 Q. Mr. Howell, handing you what's been marked
 13 Plaintiff's Exhibit 606, Bates marked Riter_Kenneth
 14 1066. Please take a look at that and let me know
 15 when you're done.
 16 A. Okay.
 17 Q. Mr. Howell, do you recognize Plaintiff's
 18 Exhibit 606?
 19 A. I don't recall it. I'm sure it was sent
 20 to me. I'm not sure if I read it or not. I get
 21 lots of e-mails, so I'm sure it was sent to me. I'm
 22 not sure if I read this particular one or not.
 23 Q. Okay. Well, we see at the top, the top
 24 e-mail is from Ken Riter --
 25 A. Yeah.

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1 Q. -- to Christopher Moran, so that's not --
 2 A. And I didn't know -- probably saw --
 3 Q. You weren't part of that?
 4 A. -- who it was from, so I didn't know
 5 anything, didn't pay any attention to it.
 6 Q. But below that, right, we see an e-mail
 7 from Greg Shepard, greg@rapower3.com, right?
 8 A. Yeah.
 9 Q. Sent November 15, 2014, correct?
 10 A. Yes.
 11 Q. And it's to you, John Howell.
 12 A. Yes.
 13 Q. And then a few other people are cc'd
 14 underneath. Do you see that?
 15 A. Yes.
 16 Q. The subject is "IRS Tactics Against Tax
 17 Preparers," right?
 18 A. Yes.
 19 Q. Does this look like a true and correct
 20 copy of an e-mail that you received?
 21 A. I'm sure it is.
 22 Q. Any reason to think it's not?
 23 A. No.
 24 Q. Mr. Howell, did you represent any
 25 taxpayers who were being audited by the State of

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1 Oregon?
 2 A. I think there was one, I believe. Trying
 3 to remember what his name was. Starts with a P, I
 4 believe.
 5 Q. Do you recall Mr. Shepard doing any sort
 6 of coordination work with respect to the Oregon
 7 appeals?
 8 A. He was finding somebody there in Oregon to
 9 handle the Oregon case.
 10 Q. Has there been any resolution of that
 11 case?
 12 A. Not that I know of.
 13 Q. Did you do anything in that case besides
 14 send letters or anything like that?
 15 A. I think I just sent some letters. Since
 16 the IRS is -- appeal is in tax court, the state's
 17 all on hold, as far as I know. I haven't been in
 18 contact with any of that lately.
 19 (Exhibit 607 marked)
 20 Q. All right, Mr. Howell, you've been handed
 21 what's been marked Plaintiff's Exhibit 607. Do you
 22 recognize Plaintiff's Exhibit 607?
 23 A. Yes.
 24 Q. This is a letter from you, correct?
 25 A. Correct.

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| <p style="text-align: right;">Page 229</p> <p>1 Q. To the IRS?</p> <p>2 A. Correct.</p> <p>3 Q. It's dated 5/28/2015? Do you see that?</p> <p>4 A. Correct.</p> <p>5 Q. Do you believe you sent this on or about</p> <p>6 that date?</p> <p>7 A. Correct.</p> <p>8 Q. Take a look, please, at the last page. Is</p> <p>9 your signature on the last page?</p> <p>10 A. Yes, it is.</p> <p>11 Q. Does Plaintiff's Exhibit 607 appear to be</p> <p>12 a true and accurate copy of a letter you sent to the</p> <p>13 IRS?</p> <p>14 A. Yes.</p> <p>15 (Exhibit 608 marked)</p> <p>16 Q. Let's take a look, please, at Plaintiff's</p> <p>17 Exhibit 608, which is Bates numbered Howell_John 335</p> <p>18 through 346.</p> <p>19 A. Okay.</p> <p>20 Q. Do you recognize Plaintiff's Exhibit 608?</p> <p>21 A. Yes.</p> <p>22 Q. What is it?</p> <p>23 A. It's a letter I sent to the IRS, Gaylon</p> <p>24 Berg, for the audit of Robert Aulds, Meria</p> <p>25 Gillespie-Aulds.</p> | <p style="text-align: right;">Page 231</p> <p>1 that special witness's information during this audit</p> <p>2 process?</p> <p>3 A. Well, because this was going to the -- for</p> <p>4 the appeals.</p> <p>5 Q. Why didn't you submit it --</p> <p>6 A. The audit --</p> <p>7 Q. -- in the first place?</p> <p>8 A. The auditor has already determined the</p> <p>9 outcome of them.</p> <p>10 Q. Right. And the auditor asked for</p> <p>11 information, right?</p> <p>12 A. Based for the tax return, yes.</p> <p>13 Q. Okay. So did you ever submit this special</p> <p>14 witness's testimony to anyone at the IRS?</p> <p>15 A. No, because they had already determined</p> <p>16 that no matter what we said or did, their outcome</p> <p>17 was it was going to be denied. So we said, okay,</p> <p>18 we'll go to appeals then. That's what this was for.</p> <p>19 Q. And if the IRS said, yes, we do want to</p> <p>20 hear from this person, what would you do?</p> <p>21 A. I'd have probably found out who they were</p> <p>22 and a phone number to contact them.</p> <p>23 Q. But you don't have that information today,</p> <p>24 do you?</p> <p>25 A. No, I do not.</p> |
| <p style="text-align: right;">Page 230</p> <p>1 Q. The date at the top is February 26, 2016.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you think you sent this to the IRS on</p> <p>5 or about that date?</p> <p>6 A. Yes.</p> <p>7 Q. All right. So this is three years after</p> <p>8 the 2013 letter about an Aulds audit with respect to</p> <p>9 RaPower3, right?</p> <p>10 A. Mm-hmm.</p> <p>11 Q. Yes?</p> <p>12 A. Yes.</p> <p>13 Q. And Plaintiff's Exhibit 608 is also in</p> <p>14 response to an audit of RaPower3 tax benefits.</p> <p>15 A. Yes.</p> <p>16 Q. If you take a look, please, at page 345.</p> <p>17 A. Okay.</p> <p>18 Q. Once again, we see the offer that the</p> <p>19 taxpayers can provide additional evidence and expert</p> <p>20 testimony from special witnesses. Do you see that?</p> <p>21 A. On 345?</p> <p>22 Q. Third paragraph from the bottom.</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So you've known about this special</p> <p>25 witness for three years now. Why didn't you submit</p> | <p style="text-align: right;">Page 232</p> <p>1 (Exhibit 609 marked)</p> <p>2 Q. Take a look, please, at what's been marked</p> <p>3 Plaintiff's Exhibit 609. 609 is Bates marked</p> <p>4 Howell_John 1559 through 1565.</p> <p>5 A. Okay.</p> <p>6 Q. Do you recognize Plaintiff's Exhibit 609?</p> <p>7 A. Yes.</p> <p>8 Q. What is it?</p> <p>9 A. It's a statement of disputed issues from</p> <p>10 an audit for appeals.</p> <p>11 Q. And did you draft Plaintiff's Exhibit 609?</p> <p>12 A. I believe I did.</p> <p>13 Q. Did you send it to the IRS?</p> <p>14 A. Yes, I did.</p> <p>15 Q. Did you send it on or about the date at</p> <p>16 the top of the page, July 20, 2016?</p> <p>17 A. Yes.</p> <p>18 Q. This audit and appeal, did this have to do</p> <p>19 with tax benefits related to RaPower3?</p> <p>20 A. Part of it, yes.</p> <p>21 Q. What part of this did not have to do with</p> <p>22 RaPower3?</p> <p>23 A. The logbook, charitable contributions.</p> <p>24 Q. So, Mr. Howell, if we take a look at the</p> <p>25 last couple of lines on page 1559 that starts "The</p> |

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| <p style="text-align: right;">Page 233</p> <p>1 first thing to remember," do you see that?</p> <p>2 A. Mm-hmm.</p> <p>3 Q. Yes?</p> <p>4 A. Yes.</p> <p>5 Q. So starting from there through the rest of</p> <p>6 the letter, that all has to do with RaPower3,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Mr. Howell, were you aware that in late</p> <p>10 2016 RaPower3 stopped promoting depreciation as a</p> <p>11 tax benefit related to buying one of its lenses?</p> <p>12 A. I had heard that.</p> <p>13 Q. What did you hear about it?</p> <p>14 A. That they were adjusting their -- their</p> <p>15 pricing for just the energy credit and not the</p> <p>16 depreciation.</p> <p>17 Q. Who did you hear it from?</p> <p>18 A. I believe there was a e-mail or memo or</p> <p>19 something that was sent out from Greg Shepard</p> <p>20 concerning it.</p> <p>21 Q. Did that decision have any impact on how</p> <p>22 you prepared RaPower3 customer returns for tax year</p> <p>23 2016?</p> <p>24 A. Because I asked them under what</p> <p>25 presumption are they saying not to take depreciation</p> | <p style="text-align: right;">Page 235</p> <p>1 Q. Yes.</p> <p>2 A. I think way back when I was a teenager.</p> <p>3 Q. We don't have to go into that. Have you</p> <p>4 ever been convicted of any crime?</p> <p>5 A. Not unless they did it without me being</p> <p>6 there.</p> <p>7 Q. Have you ever been subject to any</p> <p>8 professional discipline?</p> <p>9 A. No.</p> <p>10 Q. Are there any answers to my questions that</p> <p>11 you wish to change or amplify before I pass you as a</p> <p>12 witness?</p> <p>13 A. Make one thing clear. If I think</p> <p>14 something is going to defraud the government or is a</p> <p>15 actual tax scam or such, I'm not going to do it. If</p> <p>16 it's cut and dried that this is definitely against</p> <p>17 the regulations, there's nothing to substantiate it,</p> <p>18 then, no, we're not going to do that.</p> <p>19 But tax law isn't precise. There's a lot</p> <p>20 of gray area. There's a lot of exceptions to tax</p> <p>21 law. And if it says, no, it comes down to you</p> <p>22 cannot do this, then we don't do it. If it says if</p> <p>23 you've got some gray area here, well, what is that</p> <p>24 particular area. But if it's cut and dried, if tax</p> <p>25 law was simple to where, yes, you can, no, you</p> |
| <p style="text-align: right;">Page 234</p> <p>1 on equipment that the taxpayer has purchased.</p> <p>2 Q. So the answer is no?</p> <p>3 A. No. So the answer is no.</p> <p>4 Q. So just to make it clear for the record,</p> <p>5 for RaPower3 customers who purchased lenses in 2016,</p> <p>6 when you prepared their tax return, you claimed</p> <p>7 depreciation for those lenses?</p> <p>8 A. Most of my clients, yes, we claimed</p> <p>9 depreciation because they had bought prior to any</p> <p>10 changes.</p> <p>11 Q. What if they bought after the changes?</p> <p>12 A. I don't think I had any.</p> <p>13 Q. Okay. So have any of your customers, to</p> <p>14 your knowledge, bought lenses in 2017?</p> <p>15 A. I am sure that they have. None of them</p> <p>16 have told me specifically that they have.</p> <p>17 Q. Do you plan to make any changes? Are you</p> <p>18 going to claim depreciation for those customers?</p> <p>19 A. If they're entitled to depreciation, yes.</p> <p>20 Q. And will you make that decision based on</p> <p>21 what RaPower3 says or based on your interpretation</p> <p>22 of the law?</p> <p>23 A. My interpretation.</p> <p>24 Q. Mr. Howell, have you ever been arrested?</p> <p>25 A. Arrested?</p> | <p style="text-align: right;">Page 236</p> <p>1 cannot, that there's nothing -- no leeway there, if</p> <p>2 it says, no, you cannot, then we're not going to do</p> <p>3 it.</p> <p>4 Because, I mean, everybody files a tax</p> <p>5 return or they should file a tax return and the</p> <p>6 government has to live on the tax dollars that are</p> <p>7 collected. And so if it's cut and dried and it's</p> <p>8 totally over here, no, you cannot do it, we're not</p> <p>9 going to do it.</p> <p>10 Q. Mr. Howell, whose job is it to prove that</p> <p>11 they're entitled to a tax benefit?</p> <p>12 A. The taxpayer themselves.</p> <p>13 MS. HEALY GALLAGHER: At this time I will</p> <p>14 pass the witness.</p> <p>15 MR. PAUL: I have just a couple questions.</p> <p>16 EXAMINATION</p> <p>17 BY MR. PAUL:</p> <p>18 Q. Okay. And, Mr. Howell, I'm going to</p> <p>19 introduce myself briefly. I'm Steven Paul, P-A-U-L.</p> <p>20 I'm the attorney for RaPower3 entities and</p> <p>21 Mr. Johnson, and I just want to ask a couple of</p> <p>22 questions.</p> <p>23 In advising a tax client to take either</p> <p>24 the solar tax credit or a depreciation relating to</p> <p>25 RaPower3, did you analyze the facts of each client's</p> |

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| <p style="text-align: right;">Page 237</p> <p>1 needs individually at the time of preparing a tax 2 return? 3 A. Yes, based on information that they gave 4 us and their overall tax return preparation. 5 Q. And is it your practice to make a 6 determination whether any tax treatment is 7 appropriate on a case-by-case basis for any of your 8 individual clients? 9 A. Yes. 10 Q. And did you perform your own analysis to 11 confirm the application of the tax code to your 12 clients and specifically related to Sections 48 and 13 45 of the tax code and Sections 469 of the code 14 relating to tax credits and depreciation? 15 MS. HEALY GALLAGHER: Objection. 16 Compound. 17 You can answer. 18 A. Yes. 19 BY MR. PAUL: 20 Q. Okay. So you performed your own analysis? 21 You didn't rely on anybody from RaPower or any 22 website related to RaPower to make a determination 23 as to the application of tax code to your clients, 24 correct? 25 MS. HEALY GALLAGHER: Objection.</p> | <p style="text-align: right;">Page 239</p> <p>1 Q. You are not -- you are not a 2 decision-maker or policymaker for the company, 3 correct, for RaPower? 4 A. No. 5 Q. You didn't establish any kind of tax 6 policy for them, did you? 7 A. No. 8 Q. Now, you were -- you testified about being 9 in Utah and seeing some of the infrastructure there. 10 I'm not going to go over it in detail, but my 11 question to you is, you mentioned at some point 12 there was a CPA there that you spoke with or you had 13 some contact with about RaPower and clients and 14 energy credits, et cetera. Did I understand 15 correctly? 16 A. Yes. 17 Q. And who was that CPA? 18 A. Bolander, I believe his name is. 19 Q. What was your understanding at that time 20 as to his position with RaPower? 21 A. He just prepared tax returns for 22 individuals that were taking advantage of the 23 RaPower3. 24 Q. And in summary, what was the content of 25 your discussion with him at that time?</p> |
| <p style="text-align: right;">Page 238</p> <p>1 A. Correct. 2 MS. HEALY GALLAGHER: Misstates prior 3 testimony. 4 MR. PAUL: Okay. That's all I've got. 5 Thank you. 6 MS. HEALY GALLAGHER: Mr. Teakell? 7 MR. TEAKELL: Yes, I do have several 8 questions for Mr. Howell. 9 EXAMINATION 10 BY MR. TEAKELL: 11 Q. Mr. Howell, you were not a -- not 12 affiliated with RaPower3 in any other way other than 13 what you've testified about today, correct? 14 A. Correct. 15 Q. You're not an officer? 16 A. No. 17 Q. You're not affiliated other than being a 18 tax service for the clients about whom you've 19 testified? 20 A. Yes. 21 MS. HEALY GALLAGHER: Object. 22 A. That's all that I do. 23 MS. HEALY GALLAGHER: Objection. 24 Misstates prior testimony. 25 BY MR. TEAKELL:</p> | <p style="text-align: right;">Page 240</p> <p>1 A. He said that he had researched, done his 2 own research into the tax laws and everything and 3 that he prepared his clients' tax returns based on 4 that information. And he had apparently went 5 through some audits with some of his clients. 6 Q. Now, in regard to the tax clients that 7 you've testified about today, is my understanding 8 correct that you are not making investment decisions 9 for them? 10 MS. HEALY GALLAGHER: Objection. Leading. 11 A. No, I make no investment decisions for 12 them. 13 BY MR. TEAKELL: 14 Q. You have -- am I correct in my 15 understanding that as a -- an accountant or tax 16 preparer, you do not have the duty to try to 17 investigate some information that they bring to you 18 such as their income, their -- what they've invested 19 in, things of that nature? 20 MS. HEALY GALLAGHER: Objection. Leading. 21 Compound. 22 A. No, I don't. There's no duty for us to 23 research their W-2 to make sure that they did work 24 for that company, that their 1099s are correct, 25 unless they feel that they have an incorrect one,</p> |

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1 then we'll help them try to determine that.
 2 BY MR. TEAKELL:
 3 Q. Were you functioning -- and forgive me if
 4 I've asked this. Were you functioning as an
 5 investment adviser?
 6 A. No.
 7 Q. Anything close to that?
 8 A. No.
 9 Q. Now, there was nothing that was -- that
 10 put any duty or made it incumbent upon you or was
 11 there anything that made it incumbent upon you to
 12 try to do some sort of independent testing or study
 13 regarding the information that was given to you by
 14 RaPower?
 15 MS. HEALY GALLAGHER: Objection.
 16 Compound. Leading.
 17 A. Nothing that I thought I should hire my
 18 own engineer to do my own study on it.
 19 BY MR. TEAKELL:
 20 Q. You relied on the information given to you
 21 by -- well, you've already test -- strike that.
 22 You've already testified about making a
 23 trip and seeing what you saw there in Utah regarding
 24 the company, what I'll refer to as infrastructure.
 25 And you've already testified about what info was

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1 given you at different points.
 2 Did you -- was there any other area that
 3 you relied upon from RaPower in addition to those
 4 things?
 5 A. No.
 6 Q. Did you have any other pipeline or
 7 information system other than what RaPower or its
 8 representatives would tell you or give you?
 9 A. No.
 10 Q. About RaPower itself.
 11 A. Correct.
 12 Q. Now, you were shown just a little while
 13 ago some letters. The Kirton McConkie letter and
 14 the Anderson letter I think were two examples.
 15 At the time that you had -- well, let me
 16 ask it this way. At any point prior to today, did
 17 you understand that those letters as they were
 18 written had been clarified or retracted to some
 19 degree?
 20 A. No.
 21 Q. Did you learn anything else today in
 22 regard to input from the company and/or other CPAs
 23 about the -- their position regarding energy credits
 24 and benefits that have been asked about today?
 25 A. No.

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1 Q. Now, you were asked at one point why
 2 didn't you stop entirely as far as tax benefits
 3 after -- I think it was in regard to the execution
 4 of the search warrant. Did I understand correctly
 5 or not? Did I understand that was a question asked
 6 to you, similar or something close to that?
 7 A. Yes.
 8 Q. Did you -- what was the reason or was
 9 there a reason that you didn't stop entirely?
 10 A. There's been other court cases to where
 11 the IRS had said or investigated somebody for a
 12 potential tax scheme or problem and then it was
 13 overturned in the tax courts saying, no, that's not
 14 the case at all, so that -- and they totally
 15 reversed what IRS was saying.
 16 Q. Now, did you ever receive any confirmation
 17 one way or the other as to what was happening with a
 18 criminal investigation regarding RaPower or at least
 19 the search warrant execution?
 20 A. I never found out the results of that. I
 21 just -- the only thing that I was told is that
 22 computers and stuff still had never been returned to
 23 RaPower.
 24 Q. Do you have an estimation of the
 25 percentage of returns for the RaPower related

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1 clients that were prepared -- that you prepared or
 2 had a hand in preparing prior to the execution of
 3 the search warrant?
 4 A. There was probably -- prior to the search
 5 warrant, that was in 2012, I'd probably just done
 6 maybe 15, 20.
 7 Q. But was that -- was that or was that not
 8 the point where you decreased your -- the returns
 9 for those clients, or did it have an effect?
 10 A. It didn't really have an effect at that
 11 time, because it was in 2012.
 12 Q. Now, the two times you testified about
 13 going to RaPower and seeing whatever you saw there,
 14 were those -- did I understand it to be correct that
 15 those were the only two times that you had been
 16 there?
 17 A. Yes, that's correct.
 18 Q. And -- excuse me?
 19 A. That's correct. Only been there twice.
 20 Q. And any other information you received has
 21 been via what form?
 22 A. E-mails, YouTube videos that they have
 23 produced. Neldon Johnson has a radio program he
 24 does. I think I listened once to that.
 25 MR. TEAKELL: Give me just a moment,

| | |
|--|--|
| <p style="text-align: right;">Page 245</p> <p>1 please. I'm looking for 501.</p> <p>2 MS. HEALY GALLAGHER: I have an extra copy</p> <p>3 if you need it.</p> <p>4 MR. TEAKELL: Yes, please. Thank you.</p> <p>5 BY MR. TEAKELL:</p> <p>6 Q. There's an exhibit that was presented to</p> <p>7 you earlier marked as 501. You recall seeing that?</p> <p>8 A. No.</p> <p>9 Q. It's in today's testimony, in this</p> <p>10 deposition. Did you recall seeing that?</p> <p>11 A. No, I didn't.</p> <p>12 Q. Okay. Would you take a look?</p> <p>13 A. Trying to find where -- okay. Yes, I know</p> <p>14 Bob and -- but this is the first time I had seen</p> <p>15 this particular document.</p> <p>16 Q. Well, that's what I was going to clarify</p> <p>17 with you. I had -- understood that you hadn't seen</p> <p>18 it before, but does that mean that you had not seen</p> <p>19 it prior to today?</p> <p>20 A. Right. I -- this is the first time I have</p> <p>21 seen this particular document.</p> <p>22 Q. Had you heard of this before today?</p> <p>23 A. No, I had not heard of this particular</p> <p>24 document.</p> <p>25 Q. And this is the one that references you</p> | <p style="text-align: right;">Page 247</p> <p>1 statement was Shepard directly telling you that?</p> <p>2 A. Yes.</p> <p>3 Q. And did he tell you that via a phone call?</p> <p>4 A. I can't remember if it was a phone call or</p> <p>5 an e-mail or something, because we had a number of</p> <p>6 audits that were in 2013, '14.</p> <p>7 MR. TEAKELL: That's all I have.</p> <p>8 FURTHER EXAMINATION</p> <p>9 BY MS. HEALY GALLAGHER:</p> <p>10 Q. Mr. Howell, let's go back to Bryan</p> <p>11 Bolander. Did you ever have one-on-one</p> <p>12 conversations with Mr. Bolander in your visit to</p> <p>13 Utah?</p> <p>14 A. I think it was just a number of us were</p> <p>15 together at the convention.</p> <p>16 Q. So was --</p> <p>17 A. And we were just discussing the RaPower,</p> <p>18 his experience with it, what research and such he</p> <p>19 had come up with.</p> <p>20 Q. Did he make a presentation?</p> <p>21 A. I believe he did.</p> <p>22 Q. So this -- was this a separate small group</p> <p>23 conversation with --</p> <p>24 A. Yes, yes.</p> <p>25 Q. Sorry. Let me finish the question. So</p> |
| <p style="text-align: right;">Page 246</p> <p>1 and your contact information with Roger Freeborn's</p> <p>2 name and contact at the bottom, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Now, you were asked more than once about</p> <p>5 some documents that referenced additional</p> <p>6 information, additional evidence, additional</p> <p>7 testimony that you had put in correspondence</p> <p>8 regarding audits. Do you remember that?</p> <p>9 A. Yes.</p> <p>10 Q. Now, my question is, what was -- I</p> <p>11 understand you had a basis for making those</p> <p>12 statements or that statement that was repeated</p> <p>13 essentially in more than one document. And again,</p> <p>14 what was that, or what was that?</p> <p>15 A. RaPower, usually from Greg Shepard, said</p> <p>16 they had a special witness that we could -- that</p> <p>17 they would use in appeals if they needed to and we</p> <p>18 would just need to contact them at that time if we</p> <p>19 were going to have a appeals conference call and</p> <p>20 that that person would be available.</p> <p>21 Q. Was there anybody else from RaPower who</p> <p>22 gave you that information, or did this come from</p> <p>23 Shepard?</p> <p>24 A. It just came from Greg Shepard.</p> <p>25 Q. So the basis -- your basis of that</p> | <p style="text-align: right;">Page 248</p> <p>1 the conversation you're remembering was a separate</p> <p>2 small group conversation with Mr. Bolander?</p> <p>3 A. Yes.</p> <p>4 Q. To your knowledge, is Mr. Bolander</p> <p>5 preparing RaPower3 tax returns today?</p> <p>6 A. I don't know. I'm not in contact with</p> <p>7 him.</p> <p>8 Q. So if he bailed on RaPower3, you would</p> <p>9 have no reason to know that?</p> <p>10 A. I would have no reason to know that.</p> <p>11 Q. Would it surprise you to learn that he</p> <p>12 stopped preparing RaPower3 tax returns?</p> <p>13 A. That is surprising because he had been</p> <p>14 doing quite a few of them from what I heard.</p> <p>15 Q. Okay. So, Mr. Howell, you don't know why</p> <p>16 Mr. Bolander stopped preparing RaPower3 tax returns?</p> <p>17 A. I don't know.</p> <p>18 Q. To your knowledge, did you pick up any</p> <p>19 RaPower3 customers that used to have their returns</p> <p>20 prepared by Mr. Bolander?</p> <p>21 A. One or two that were local and they didn't</p> <p>22 want to send them to him.</p> <p>23 Q. Did Mr. Bolander provide any written</p> <p>24 materials at his presentation or during your small</p> <p>25 group conversation?</p> |

| | |
|--|---|
| <p style="text-align: right;">Page 249</p> <p>1 A. I don't believe so.</p> <p>2 Q. Did you ever receive anything in writing</p> <p>3 from Mr. Bolander?</p> <p>4 A. No. Never requested anything.</p> <p>5 MS. HEALY GALLAGHER: Those are my</p> <p>6 questions. Steven?</p> <p>7 MR. PAUL: I don't have anything else.</p> <p>8 MR. TEAKELL: No.</p> <p>9 MS. HEALY GALLAGHER: Mr. Teakell,</p> <p>10 nothing?</p> <p>11 MR. TEAKELL: No. Correct.</p> <p>12 MS. HEALY GALLAGHER: All right. Then --</p> <p>13 all right. I will ask that Mr. Howell read and sign</p> <p>14 his deposition. And Mr. Teakell will explain to you</p> <p>15 what that means. We are off the record. Thank you</p> <p>16 very much.</p> <p>17 Steven, do you want to put your order on</p> <p>18 if you want to order?</p> <p>19 MR. PAUL: Yes, we would like to order.</p> <p>20 THE REPORTER: What format would you like?</p> <p>21 MR. PAUL: Digital, just regular, standard</p> <p>22 electronic format. We don't need a hard copy.</p> <p>23 THE REPORTER: And would you like PDF</p> <p>24 exhibits?</p> <p>25 MR. PAUL: Yes, please.</p> | <p style="text-align: right;">Page 251</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I, _____, do hereby</p> <p>4 acknowledge that I have read and examined the</p> <p>5 foregoing testimony, and the same is a true, correct</p> <p>6 and complete transcription of the testimony given by</p> <p>7 me, and any corrections appear on the attached Errata</p> <p>8 Sheet signed by me.</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 (DATE) JOHN HOWELL</p> <p>13</p> <p>14 STATE OF _____)</p> <p>15 COUNTY OF _____)</p> <p>16 Before me, _____, on this</p> <p>17 day personally appeared JOHN HOWELL, known to me (or</p> <p>18 proved to me under oath or through</p> <p>19 _____) (description of identity card or</p> <p>20 other document) to be the person whose name is</p> <p>21 subscribed to the foregoing instrument and</p> <p>22 acknowledged to me that they executed the same for</p> <p>23 the purposes and consideration therein expressed.</p> <p>24 Given under my hand and seal of office</p> <p>25 this _____ day of _____, 2017.</p> |
| <p style="text-align: right;">Page 250</p> <p>1 (Deposition concluded at 6:13 p.m.)</p> <p>2</p> <p>3 -oOo-</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 252</p> <p>1</p> <p>2 _____</p> <p>3 NOTARY PUBLIC IN AND FOR</p> <p>4 THE STATE OF _____</p> <p>5</p> <p>6 My Commission Expires: _____</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |

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1 IN THE UNITED STATES DISTRICT COURT FOR THE
 2 DISTRICT OF UTAH, CENTRAL DIVISION
 3
 4 UNITED STATES OF AMERICA,)
 5)
 6 Plaintiff,)
 7)
 8 vs.)Civil No.
 9 RAPOWER-3, LLC, INTERNATIONAL)2:15-cv-00828-DN-EJF
 10 AUTOMATED SYSTEMS, INC., LTB1,)
 11 NELDON JOHNSON, and ROGER)
 12 FREEBORN,)
 13)
 14 Defendants.)
 15)
 16)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)

1 REPORTER'S CERTIFICATE
 2 ORAL DEPOSITION OF JOHN HOWELL
 3 AUGUST 23, 2017

4 I, KAREN L. SHELTON, a Certified Shorthand
 5 Reporter in and for the State of Texas, hereby
 6 certify to the following:
 7 That the witness, JOHN HOWELL, was duly
 8 sworn by the officer and that the transcript of the
 9 oral deposition is a true record of the testimony
 10 given by the witness;
 11 I further certify that pursuant to FRCP
 12 Rule 30(e) that the signature by the deponent:
 13 _X_ was requested by the deponent or a
 14 party before the completion of the deposition and is
 15 to be returned within 30 days from date of receipt
 16 of the transcript. If returned, the attached Errata

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1 contains any changes and the reasons therefor;
 2 ____ was not requested by the deponent or a
 3 party before the completion of the deposition.
 4 I further certify that I am neither
 5 counsel for, related to, nor employed by any of the
 6 parties in or counsel to this action, nor am I
 7 financially or otherwise interested in the outcome
 8 of this action.
 9 Certified to by me this 27th day of
 10 August, 2017.
 11
 12
 13 Karen L. Shelton, CSR/RDR/CRR
 14 Henderson Legal Services
 15 1560 Wilson Boulevard
 16 Suite 750
 17 Arlington, Virginia 22209
 18 (877) 548-8787
 19
 20
 21
 22
 23
 24
 25

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